

A

T R E A T I S E

O N T H E

R O M A N S E N A T E.

I N T W O P A R T S.

The F I R S T P A R T contains

The substance of several letters, formerly written to
the late Lord HERVEY, concerning the manner of
creating SENATORS, and filling up the vacancies of
that body in OLD ROME.

The S E C O N D P A R T, which is now added,
contains a distinct account

- I. Of the power and jurisdiction of the SENATE.
- II. Of the right and manner of convoking it.
- III. Of the places, in which it was usually assembled.
- IV. Of the legal times of holding their assemblies.
- V. Of the different ranks and orders of men in the
SENATE, and of the forms observed in their delibe-
rations.
- VI. Of the nature and force of their decrees.
- VII. Of the peculiar dignity, honors and ornaments
of a ROMAN SENATOR.

By CONYERS MIDDLETON, D. D.

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А.Ф.МОТЫГИН ПУБЛИКАЦИЯ
СОВЕТСКОГО УЧЕБНО-МЕТОДИЧЕСКОГО ИЗДАНИЯ

ОДИНАДЦАТЬ ВОСЬМЫХ КЛАССОВ
СОВЕТСКОГО УЧЕБНО-МЕТОДИЧЕСКОГО ИЗДАНИЯ

A

T R E A T I S E
ON THE
R O M A N S E N A T E.

P A R T the F I R S T.

THE late Lord *Hervey*, who had long honoured me with very distinguishing marks of his friendship, took occasion in one of his letters, about twelve years ago, to ask my opinion, on two or three points, relating to Classical antiquity, and especially, *on the manner of creating Senators, and filling up the vacancies of the Senate in Old Rome*; on which M. *Vertot's* answer to the same question, when it was proposed to him by the late Earl *Stanhope*, had not given him satisfaction.

B

In

A Treatise on

In compliance therefore with his Lordship's request, I presently sent him my thoughts on the other points, above intimated; and, in a separate letter, endeavoured to explane the state of the *Roman Senate*, from that time, in which the Commons of *Rome* first opened their way to the public honors of the city, till the final oppression of their liberty, which I observed to be the period, to which Earl Stanhope's question was particularly referred.

But my short account of the matter, did not answer the purpose of Lord *Hervey*'s inquiry, nor solve the particular difficulties, which seemed to him to perplex it. He resolved therefore, to take the pains of searching into it himself, and of tracing out the origin, and progress of the Senate, from it's first institution by *Romulus*, down to the reign of *Augustus*: the result of which was, that his opinion at last happened to differ from mine, which he explained with great eloquence, and enforced

enforced with great learning, drawn from the principal writers on the *Roman* affairs, both *Greek* and *Latin*.

Here then was a controversy, unexpectedly started between us, and several letters exchanged upon it. And I could heartily wish, that all controversies of the same kind, were carried on with the same spirit. For tho' each of us espoused a different hypothesis, from which neither at last seemed willing to depart, yet this adherence to our several opinions, gave not the least shock to our friendship, but rendered it more agreeable still on both sides, as being grounded on that ingenuous freedom and indulgence to each other's way of thinking, without which, no friendship can either be valuable or lasting.

As the subject of these papers has not been professedly treated, by any of the Ancients; nor, in my opinion, sufficiently explained, by any of the Moderns, so I flatter myself, that the

publication of what I had collected upon it, in the defence of my hypothesis, may be of some little use or entertainment to the curious; as it exhibits a more distinct idea, than will easily be found elsewhere, of the genius of the *Roman* government in general, as well as a more precise illustration of the constitution of the *Roman* Senate; which may be called, *the soul or vital principal* of that mighty republic, [a] and what gave birth and motion, to all those celebrated acts, which were successively produced in it.

In answer therefore to the question abovementioned, concerning *the right and manner of creating Senators*, and filling up the vacancies of that body, I sent my Lord *Hervey* the following letter.

[a] Ἐοικέναι τε τῷ καθ' ἔνα τὸ κοινὸν ἔφη: ψυχῆς μὲν γὰρ ἀνδρὸς ἀνάλογον ἐχόστης τὸ τῆς βαλῆς; Λώματος δὲ, τὸ τῇ δήμῳ. Dionys. Hal. 5. 67. Edit. Oxon.

MY LORD,

April 1, 1735.

I WISH, that it were in my power to give your Lordship any satisfaction, on this or any other occasion, where you can possibly want it; which as I endeavoured in my last letter, upon a question of a different kind, so I shall attempt again in this, on the subject of the Roman Senate, where I fancy myself perhaps more capable, as well as the argument more worthy of your Lordship's inquiry.—I am ashamed to confess, that when I received the honour of your Lordship's, I had not read M. *Vertot*'s answer to Earl *Stanhope*: but I have since procured it, in order to see distinctly, what it was, that could remain still obscure to you, in a question, which had been treated by so able a master, and which of itself had appeared always to me to be sufficiently clear. I shall not trouble your Lordship with my particular exceptions to the

account of that learned Antiquary, but give you only in short, my own sentiments on the same subject, drawn, as I imagine, from evident and authentic testimonies of the ancient writers.

From the time, that the Plebeians had opened themselves a way to the first honors of the state, the constant and regular supply of the Senate was from the annual magistrates; who by virtue of their several offices acquired an immediate right to sit and vote in that assembly. The usual gradation of these offices, was that of *Quæstor*, *Tribune of the people*, *Ædile*, *Prætor*, and *Consul*; which every candidate, in the ordinary forms of the constitution, was obliged to take in their order, with this exception only, that he might forego either the Tribune or the Ædileship at his own choice, without a necessity of passing through them both. The *Quæstorship* was called the first step of honor: and the *Quæstors*, who were generally employed

ed in the provinces abroad, assigned to them severally by lot, no sooner returned from their provincial administration, than they took their places in the Senate, and from that time forward, from the rank of Equestrians, or what we commonly call Knights, became Senators for life.

All these magistrates were elected by the people in their public assemblies, promiscuously and indifferently from the whole body of the citizens; which explains what *Cicero* frequently declares in different parts of his works, " That the senatorian dignity " was conferred by the suffrage and " judgment of the whole Roman people; and that an access to the supreme council of the republic was " laid open to the virtue and industry " of every private citizen [a].

B 4 But

[a] *Qui cum regum potestatem non tulissent, ita magistratus annuos creaverunt, ut concilium Senatus reip. proponerent sempiternum; deligerentur autem in id consilium ab universo populo, aditusque in*

But though these offices gave both an immediate right and actual entrance into the Senate, yet the senatorian character was not esteemed complete, till the new Senators had been enrolled by the Censors, at the next *Lustrum*, or general review of all the orders of the city, which was generally held every five years. Yet this enrollment was but a matter of form, which could not be denied to any of them, except for some legal incapacity, or the notoriety of some crime, or infamy upon their characters; for which, the same Censors could expel or deprive any other Senator, of what rank or standing soever. It was one part likewise of the censorian jurisdiction,

in illum summum ordinem omnium civium industriae ac virtuti pateret. Cic. pr. Sext. 65.

Si populum Romanum, cuius honoribus in amplissimo consilio collocati sumus. Post. red. in Sen. I.

In eo loco, in quo me honores populi Romani collocaverunt. Pr. Dom. 31.

Cujus beneficio in hunc ordinem venimus. In Verr. 4. 11.

to

to fill up the vacancies of the Senate, upon any remarkable deficiency in their number, with new members from the equestrian order, who had not yet born any magistracy : but this was not done arbitrarily, or without the consent and approbation of the people. For by observing the manner of proceeding on some extraordinary occasions, we may collect the legal and regular method in ordinary cases. For example, after the battle of *Cannæ*, the Senate being greatly exhausted, and no Censors in office, a Dictator was created for the single purpose of filling up the vacancies : who presently ascended the Rostra, and in the presence of the people, assembled in the Forum, ordered all those, who remained alive of the last censorian list, to be first called, and enrolled anew ; then those, who since that time had born a curule magistracy, but had not been enrolled, each according to the order of his creation ; then

then those, who had been *Aediles*, *Tribunes of the people*, or *Quæstors*; and lastly, those of the equestrian rank, who had born no magistracy at all, but had signalized themselves in the war, and taken spoils from the enemy: and having thus added one hundred and seventy seven new senators to the last roll, with the universal approbation of the people, he laid down his office [b]. Upon another occasion likewise, when *Sylla*, the dictator, after the destruction made by his civil wars and proscriptions, found it necessary to fill up the exhausted senate with three hundred Knights, he gave the choice of them to the people in an assembly of their tribes [c].

The power of the Censors, being naturally odious and unpopular, was generally exercised with temper and caution, unless when an extraordinary licence and corruption of the times

[b] Liv. l. 23. 23.

[c] App. de Bell. civ. l. 1. p. 413.

seemed

seemed to demand a particular severity and enforcement of discipline. The censures however of these magistrates were not perpetual or irreversible, nor considered as bars to any future advancement : for what was inflicted by one Censor, was sometimes reversed by the other ; and what was done by them both, by an appeal to the people ; or by the succeeding Censors ; who commonly restored the disgraced party to his former dignity ; or else by obtaining, a second time, any of the magistracies abovementioned, the person so disgraced entered again into the Senate, and was enrolled of course by the next Censors. Thus we find some, who had suffered the censorian note of infamy, chosen Censors afterwards themselves [d] ; and

[d] Ponam illud unum : C. Getam, cum a L. Metello & Cn. Domitio censoribus e senatu ejectus esset, censorem ipsum postea esse factum — Quos autem L. Gellius & Cn. Lentulus, duo censores, furti & captarum pecuniarum notaverunt, ii non modo

and *C. Antonius*, who was *Cicero's* colleague in the consulship, had been expelled the senate for his vices, about six years before; and *Lentulus* also, who was expelled even after he had been consul, was restored to the Senate by obtaining the praetorship a second time after that disgrace; in which office, he was put to death by *Cicero*, for conspiring with *Catiline* against the public liberty [e].

Thus, as it is evident from un-

modo in senatum redierunt, sed etiam illarum ipsarum rerum judiciis absoluti sunt. Cic. pro Client.

42.

Censores denique ipsi saepenumero superiorum censorum judiciis — non steterunt. atque etiam ipsi inter se censores sua judicia tanti esse arbitrantur, ut alter alterius judicium non modo reprehendat, sed etiam rescindat. ut alter de senatu movere velit, alter retineat.—Ibid. 43. Vide etiam Val. Max. l. 2. 9. 9.

[e] Hunc Antonium sexennio, quo hæc dice-rentur, Gellius & Lentulus censores senatu move-runt; causamque subscriperunt, quod judicium recu-farit, quod propter æris alieni magnitudinem præ-dia manciparit, bonaque sua in potestate non habe-ret. Asc. Pæd. in Orat. in Tog. Cand. Vid. it. Dio. l. 37. p. 43. D. Vell. Pat. 2. 34.

questionable

questionable authorities, the legal and ordinary source, by which the vacancies of the Senate were supplied, was from the annual magistrates, chosen by the people : a method of supply, of all others the best adapted to support the dignity, as well as to fill up the number of that august body ; which could never be remarkably deficient, but by the uncommon accidents of war, or pestilence, or proscriptions of the nobility : on which occasions, those deficiencies were supplied, either by the extraordinary power of a Dictator, created for that purpose, or the ordinary power of the Censors, confirmed by the approbation of the people. M. *Vertot* seems to perplex the question ; first, by considering the authority of the people, and that of the Censors, as opposite and inconsistent with each other in the creation of Senators, whereas they were both of them jointly necessary, to make the act complete : secondly, by asserting

asserting the censorian power to be the original and principal in that affair, whereas it was but secondary or ministerial, to the sovereign prerogative of the people.

ABOUT a month after the date of this letter, his Lordship sent me his own opinion on the same subject, drawn out at length, in the form of a dissertation; which he supported afterwards, and farther explained by a second; and finally defended by a third.

As soon as I had received the first of them, I immediately sat down to consider the argument again more precisely: and agreeably to the method observed by his Lordship, endeavoured to sketch out the legal and genuine state of the Roman Senate, through all the several periods, in which it had suffered any remarkable alteration, under the Kings, the

Consuls, and the Censors : in pursuance of which design, as fast as I filled up my papers to the proper size of a letter, I transmitted them to his Lordship at different times and in different packets : all which I have now thought proper, for the sake of brevity and perspicuity, to connect into one continued letter, in the very words of the originals, as far as they could be recovered from the imperfect notes, which I had taken of them, or at least, in an exact conformity to that sense, in which they were first written.



My

My Lord,

WHEN your Lordship required my thoughts on the manner of filling up the Roman Senate, I gave them in the simplicity of my heart, the best, that occurred to me, on a subject, for which I was not then particularly prepared. I fancied, that I could dictate to your Lordship, as M. *Vertot* to Earl *Stanhope*, and recollecting, that I was writing to a court, thought it a part of good breeding, to keep clear of Greek and Latin. But your Lordship has fairly caught me, and, in your elaborate dissertation, given me a pattern, how I ought to have written on a question of learning, or at least, how to my Lord *Hervey*.

In my former letter, I chose to begin my account of the Senate, from that time, when its power and glory were at their height, and its history the most worthy of our notice; when it

it was free in it's deliberations, and open in it's access, to the virtue of every citizen. But since your Lordship has thought fit to recur to it's very origin, and to trace out it's progress through every period of it's duration, I think myself obliged to pursue the same method, and explaine my thoughts on it's original constitution and legal manner of supply, from the very foundation of *Rome*, to the oppression of it's liberty. But in order to place the subject of our debate in it's true light, it will be necessary, to state precisely the different opinions, which we severally entertain about it.

Your Lordship's notion then is, "that
" under the Kings of *Rome*, the choice
" and nomination of all the Senators
" depended wholly on the will of the
" Prince, without any right in the peo-
" ple, either direct or indirect: that
" the Consuls, who succeeded to the
" kingly power, enjoyed the same pre-

"rogative, till the creation of the Cen-
"sors; who ever after possessed the
"sole and absolute right of making
"and unmaking Senators."

My opinion on the contrary is, "that
"the Kings, the Consuls, and the Cen-
"sors acted in this affair, but ministe-
"rially and subordinately to the su-
"preme will of the people; in whom
"the proper and absolute power of
"creating Senators always resided." I
shall proceed therefore, in the me-
thod above proposed, to examine, what
evidence of facts, or grounds of proba-
bility can be found in favor of my
hypothesis, through all the several pe-
riods of the Roman history.

I must confess in the first place,
that, as far as our argument is con-
cerned with the regal government of
Rome, your Lordship has the Latin
writers on your side, who constantly
speak of the creation of Senators, as a
branch of the royal prerogative. But
in computing the proper force of this
evidence,

evidence, we must remember, that none of those writers treat the question professedly, but touch it only incidentally; and that it is natural to all, upon the slight and occasional mention of an event, to ascribe it to the principal agent, concerned in its production; so as to impute the acts of popular assemblies to the Prince or ruling Magistrate, who convened and presided in them, and had the chief influence perhaps in determining the transactions themselves. Thus when *Livy* tells us, *that the Praefect of the city created the first Consuls; and that Brutus, one of these Consuls, created P. Valerius, his Colleague in that office; or that the Interrex on other occasions created the Consuls, or that the Pontifex Maximus was ordered by the Senate to create the first Tribuns [f]*, he means nothing

C 2

thing

[f] *Duo Consules inde, comitiis centuriatis, a Praefecto Urbis, ex commentariis Servii Tullii, creati sunt.* Liv. I. i. 60.

Brutus

thing more, than that those Magistrates called the people together, in order to make such creations, in which they assisted and presided [g]. And as this is the usual stile of all writers, so it is peculiarly of those, who write the history of their own country, and for the information of their own people; who have not the patience, to treat minutely of things, which they suppose to be known to their readers, as well as to themselves: and hence it sometimes happens, that the origin of customs and constitutions of the greatest importance are left dark and obscure, not onely to strangers, but even to the natives of later ages.

The case however is different, with *Dionysius of Halicarnassus*; who pro-

Brutus Collegam sibi comitiis centuriatis creavit
P. Valerium. Ibid. 2. 2.

Is Consules creavit Q. Publilium Philonem & L.
Papirium Cursorem. Ibid. 9. 7.

Factum S. C. ut Q. Furius, Pont. Max. Tribunos plebis crearet. Ibid 3. 54.

[g] Ibi extemplo, Pontifice Maximo comitia ha-
bente, Tribunos plebis creaverunt. Ibid.

fesses

fesses to write for the instruction of strangers ; and to explane the civil government of *Rome*, and the origin of it's laws with the diligence of an Antiquary, as well as the fidelity of an Historian. This celebrated author then informs us, that when *Romulus* had formed the project of his Senate, consisting of an hundred members, he referved to himself the nomination only of the first, or president of the assembly, and gave the choice of all the rest to the people, to be made by a vote of their Tribes and their Curiæ. Must we then prefer one Greek to all the Latin writers ? yes, as we prefer one credible and positive evidence, to many of a negative kind ; or one, who searches things to the bottom, to any number, who, without the pains of searching, take up with the popular and vulgar accounts of things.

But of all the Roman writers, whom your Lordship has cited, as *Livy* is the chief, so he will be found perhaps to

C 3 be

be the onely one, who in the present case deserves any regard from us ; the rest of them for the most part, being but transcribers or epitomizers of him, rather than historians : so that in effect, it is the single credit of *Livy*, which, in the question before us, stands opposed to *Dionysius*, and where these two happen to differ, it cannot be difficult to decide, which of them ought to have the preference ; nay, it is already decided by the judgment of all the best critics ; who, upon the comparison, have universally preferred the diligence and accuracy of *Dionysius*, to the hast and negligence of *Livy* [b].

Let

[b] *Multa enim Dionysius de Romanorum ceremoniis religionibusque in Deos ; non pauca de variis ritibus atque institutis, deque eorum legibus ac tota politia accurate diligenterque scripsit, quæ Livius cæterique Historici partim omnino prætermiserunt, partim leviter tantum strictimque attigerunt.* H. Steph: in *Dionys.* c. 6.

*Cujus major fides in historia, quam *Livii, Tranquilli, Taciti, Arriani.* Ant. Possevin.*

Multis

Let us proceed then with our history. Upon the peace and league of union made between *Romulus* and *Tatius*, King of the *Sabins*, the number of the Senate, as *Dionysius* writes, was doubled by the addition of an hundred new members from the *Sabin* families; all chosen by the people in the same manner as before: in which account, he says, all the old writers concur, excepting a few, who declare the additional number of *Sabins* to have been only fifty [i]: which may serve as a specimen of the diligence of this author's inquiries: whereas *Livy* is not onely silent about this augmentation of the Senate, but, as your Lordship owns, expressly contradicts it. Yet all the latter writers, and your Lordship with the rest, chuse to follow *Dionysius* in

C 4 oppo-

Multis argumentis mihi persuasi, antiquissima hæc populi Romani gesta longe diligentius a *Dionysio*.
Onuph. Panvin Comm. in Fast. p. 62.

See the testimonies of authors prefixed to Hudson's edit. of *Dionysius*.

[i] Lib. 2. 47. Edit. Hudson.

opposition to him : and if in this case of the augmentation, why not in the other, of the nomination of the Senators ? for as far as the case can be determined by authority, the character of *Dionysius* will bear us out in adhering to him, preferably to all others ; especially in points of antiquity, or things remote from their own knowledge. Let us examine therefore in the next place, what facts may be collected within this period, to confirm the testimony of *Dionysius*.

All historians agree, that great powers and privileges were originally granted to the people by *Romulus* : who had no sooner secured his new city by a wall, than he began to provide laws for the citizens, because nothing else could unite a multitude into one common body [k]. This was his first care, according to *Livy*, and one of

[k] Vocata ad concilium multitudine, quæ coalescere in populi unius corpus nulla alia re, præterquam legibus poterat, jura dedit. Liv. i. 8.

his

his first laws, according to *Dionysius*, was, to divide the people into *three tribes*, and each tribe into *ten Curiæ*, for the more convenient method of voting and transacting the public business in their assemblies [^l]. He had reigned eleven or twelve years before his union with the *Sabins*: which makes it probable, that he had made this division of the people before that æra; and settled what was the first thing necessary, the form of his political government.

Each of the thirty *Curiæ* of *Old Rome* had a temple or chapel, assigned to them, for the common performance of their sacrifices and other offices of religion: so that they were not unlike to our parishes. Some remains of which little temples seem to have subsisted many ages after on the Palatine hill [^m], where *Romulus* first built the city, and always resided: whence

[^l] *Dionys.* l. 2. 7.

[^m] *Tacit. Annal.* 12. 24.

Manutius infers, that the institution of the *Curiæ* was previous to the union with the *Sabins*, since these were seated separately from the Romans on the *Capitoline* and *Quirinal* hills [n] : which confirms likewise the account of *Dionysius*, and takes off, what your Lordship alledges as an objection to it, that the *Curiæ* were not yet established, when he supposes the Senate to have been elected by them.

Again, it is agreed likewise by all, that *Romulus* instituted the *Comitia Curiata*; or the public assemblies of the people, called to vote in their several *Curiæ*; and that the matters subjected to their decision, were, the choice of all the magistrates, and the right of making of laws, war and peace. An ample jurisdiction, and in the most important articles of government; yet not wholly absolute, as

[n] *Dionys. l. 2. 50.*

Dionysius

Dionysius says, unless the Senate concurred with them [o].

But this method of transacting all the greater affairs by the people, assembled in their *Curiæ*, after it had subsisted through five successive reigns, was found to be inconvenient. For in assemblies so constituted, where every individual had an equal vote, the issue of all deliberations must depend of course on the poorer sort, who are always the most numerous, though not always the most reasonable or incorrupt; so that *Servius Tullius*, the sixth King, in order to correct this inconvenience, instituted a new division of the people into *six classes*, according to a *census*, or valuation of their estates: then he subdivided these classes into *one hundred and ninety three centuries*, and contrived to throw a majority of these centuries, that is, *ninety eight of them*, into the first class of the richest

[o] Id. c. 14.

citizens:

citizens : by which regulation, though every man voted now in his *Century*, as before in his *Curia*, yet, as all matters were decided by a majority of the *Centuries*, so the balance of power was wholly transferred into the hands of the rich ; and the poorer sort deprived of their former weight and influence in the affairs of state [p] : which wise institution was ever after observed through all succeding ages, in the elections of the principal magistrates, and the determination of all the principal transactions of the Republic.

These facts, confirmed by all writers, shew the power of the people to have been extremely great, even under the regal government. It extended to the choice, not onely of their Kings, but of all the other Magistrates, and I find no reason to imagine, that the Senators

[p] Non enim viritim suffragium eadem vi eodemque jure promiscue omnibus datum est : sed gradus facti, ut neque exclusus quisquam suffragio videretur, & vis omnis pene primores civitatis esset.
Liv. 1. 43. it. Dionys. l. 4. 20, 21.

were

were excepted, or none at least, sufficient to balance the contrary testimony of so grave an author as *Dionysius*.

On the demolition of *Alba* by *Tullus Hostilius*, some of the chief families of that city were enrolled likewise into the Senate. *Livy* reckons six, *Dionysius* seven [q]: and *Manutius*, to make their accounts consist with what is delivered concerning the limited number of the Senate, imagines, that these *Albans* were not created Senators, but *Patricians* only, and by that means rendered capable of being chosen into the Senate on the occasion of a vacancy. But it may be supposed perhaps with more probability, that the number of *Albans*, taken into the Senate at that time, was no more than what supplied the vacancies then subsisting, so as to fill it up to it's settled complement of two hundred. This affair however, as *Dionysius* intimates, was

[q] *Liv.* i. 30. *Dionys.* 3. 29. *N.M. 332 [z]*

not

gavis

2

A Treatise on
not transacted without the consent
both of the Senate and the people.

The last augmentation of the Senate, under the Kings, was made by *Tarquinius Priscus*, who added *an hundred* new members to it, from the *Plebeian* families, and so enlarged the whole number from two to *three hundred*. He did this, as *Livy* informs us, to strengthen his particular interest, and to raise a sure faction to himself in the new Senators of his own creation [r]: whence M. *Vertot* draws a conclusion, *that the people had no share in this election* [s]. But it is incredible, that an innovation of such importance, which must needs disgust the Nobles, should be attempted and established by an elective King, if he had not been supported by the power and suffrages of the commons: and especially by a Prince, so cautious of

[r] *Factio haud dubia Regis; cuius beneficio in curiam venerant.* Liv. i. 35.

[s] See M. *Vertot's* answer to E. *Stanhope*.

giving jealousy to his subjects, that he would not accept the robes and ensigns of sovereign power, which were presented to him by the *Tuscans*, whom he had subdued in war, till he had first consulted the Senate and the people, and obtained their approbation [t].

But your Lordship here remarks, that *Dionysius* himself ascribes this act to the Prince, without any mention of the people [v]: To which I answer, that after he had precisely and frequently explained the whole process of filling up the Senate, might he not think it needless to repeat the ceremonial on every occasion? might he not imagine, that what he had before so particularly described, would be applied to every subsequent case of the same kind? and when he had once settled this point, was it not natural for him, like all other writers, and for

[t] Dionys. 3. 62.

[v] Id. 67.

the sake of brevity, to impute the act done in consequence of it, to the principal mover and director of it? Since *Dionysius* then, the most accurate of the Roman historians, and who treats the particular question under debate more largely and clearly than any of them, is expressly on my side; and since all the rest, who seem to differ from him, touch it but slightly and incidentally, nor yet absolutely contradict him; I cannot help thinking, that, as far as authority reaches, my hypothesis must appear to be better grounded than your Lordship's.

I shall consider therefore in the last place, how far it is confirmed by arguments, drawn from the nature and fundamental principles of the Roman government, as it was administered under the Kings. The first citizens of *Rome* were all voluntary adventurers, whom their young leader *Romulus* had no power either to force, or means to attach to his Service, but the promise
of

of large immunities and rights, and a share with him in the administration of their common affairs. This indulgence was necessary to his circumstances; and we find accordingly, that he granted them all the privileges even of a *Democracy*; *the right of making laws, war and peace, with the choice of all their magistrates*; and most probably therefore, of *the Senators*. Now when these rights had been once granted and possessed by the people, it is not credible, that they would ever suffer themselves to be deprived of them; or that Kings elective, and of so limited a jurisdiction, should be disposed, or able to wrest them wholly out of their hands. Their first King *Romulus* no sooner began to violate the constitutions, that he himself had made, than, as it is commonly believed, he was privately taken off [x]:

[x] Οἱ δὲ τὰ πιθανώτατα γέραφοις, πρὸς τῶν ἴδιων πολιτῶν λέγοις αὐτὸν ἀποθανεῖν. Dionys. 2. 56. it. Appian. de Bell. Civ. 2.

D and

and their last King *Tarquinius*, by a more open and violent infringement of their liberties, not only lost his crown, but gave occasion to the utter extinction of the kingly government [y]. The intermediate Kings do not seem to have made any attempt upon the liberties of the people: for in the case above mentioned, when *Servius Tullius* contrived to reduce the authority of the poorer sort, it was to advance that of the rich; and to change onely the hands, not the power of his masters: to whom, as *Cicero* intimates, and as *Seneca*, upon his authority, declares, there lay *an appeal* from the magistrates, and even from the Kings themselves [z].

The

[y] *Hic enim regum primus traditum a primis morem de omnibus Senatum consulendi solvit. domesticis conciliis remp. administravit bellum, pacem, foedera, societas per se ipse, cum quibus voluit, injussu populi ac Senatus, fecit diremitque.* Liv. 1. 48.

[z] *Partim regiis institutis, partim etiam legibus auspicia, cærimoniae, provocaciones, &c.* Cic. Tusq. Quest. 4. 1.

Æque

The Kings indeed, by virtue of their office, must needs have had a great influence over the deliberations of the people. It was their prerogative, to call the people together ; to preside in their assemblies ; to propose the affairs to be debated ; or the persons to be elected ; and to deliver their own opinion the first [a]. So that we need not wonder, that the writers, who are not treating the matter critically, should impute to them the result of all the public councils. They constantly do it in the affair of *war and peace* ; which yet was the unquestionable prerogative of the people ; and when they do it therefore in the case before us, it cannot be alledged, as an argument of any weight, against the people's right of *chusing the Senators.*

Æque notat, Romulum periisse solis defectione.
Provocationem ad populum etiam a regibus fuisse.
Id ita in pontificalibus libris aliqui putant, & Fene-
stella. Senec. Epist. 108.

[a] Βαλήν τε Κυνάσειν, καὶ δῆμον Συμβολεῖν καὶ γνώμης
ἀρχεῖν, καὶ τὰ δόξαντα τοῖς πλείοσιν ἐπιτελεῖν. ταῦτα μὲν
απέδωκε βασιλεῖ τὰ γέρα. Dionys. l. 2. 14.

On the whole ; since the origin of *Rome* itself is involved in fable and obscurity, it is not strange, that the first transactions of it's citizens should also be obscure and uncertain : but upon the strictest search into the state of the present question, as it stood under the kingly government, I cannot but conclude, from the express testimony of the best historian, the concurrence of similar facts, and the probability of the thing itself, that *the right of chusing Senators* was originally and constitutionally vested in the people.

We are now arrived at the Consular state of *Rome* : and upon this memorable change of government, and the expulsion of their Kings, effected with such spirit and resolution by an injured people, for the recovery of their just rights, we may expect to find them in the possession of every privilege, which they could legally claim. For our reason would suggest, what all authors testify, that in the beginnings and un-

settled

settled state of this revolution, great complaisance and deference would necessarily be paid by the Senate to the body of the Commons [b]. I shall examine then, what facts and testimonies may be alledged in favor of my opinion, during this first period of the Consular government, till the creation of the Censors, which includes the space of sixty seven years.

The first exercise of the people's power was, to elect two Consuls, to supply the place of the ejected King : who were now chosen, as they were ever after, in the *Comitia centuriata*, or by a vote of the people assembled in their centuries, according to the institution of *Servius Tullius* : and the first care of the new Consuls was, to secure to the people all their rights, which their late King *Tarquin* had violated ; particularly, the decision of

[b] *Multa blandimenta plebi per id tempus a Senatu data.* Liv. 1. 9.

P. Valerius, the Collegue of *Brutus* in the Consulate, was so warm an assertor of the authority of the people, that he acquired by it the name of *Poplicola* [*d*]. Yet happening to build his house upon an eminence, he gave umbrage to the citizens, as if he had designed it for a citadel, and affected a power dangerous to their liberty. Upon which, he demolished what he had built, and calling the people together, in order to justify himself, commanded his officers, on their entrance into the assembly, to submit and let fall *the fasces*, or ensigns of his magistracy, as an acknowledgment, that *the majesty of the Commons* was superior to that of the Consuls [*e*]. If the

[*c*] Dionys. 5. 2.

[*d*] Qui populi majestatem venerando *Poplicola* nomen assecutus est. Val. Max. 4. 1.

[*e*] Gratum id multitudini spectaculum fuit, submissa sibi esse imperii insignia; confessionemque factam, populi quam Consulis majestatem, vimque maiorem esse. Liv. 2. 7. Vid. Dionys. 5. 19.

power therefore of the Consuls was the same with that of the Kings, as all the ancient writers declare [f], it is certain, that the power of the people was always superior to them both.

This was the state of things in the infancy of the Republic; in which the people were much caressed by the nobles, as long as there was any apprehension of danger from their deposed King or his family [g]: and in these circumstances, the Senate, which had been reduced, by Tarquin's arbitrary reign, to half its legal number, was filled up to its former complement of *three hundred*, by *Brutus* and *Valerius*; or by the one or the other of them, as

[f] *Sed quoniam regale civitatis genus probatum quondam, postea non tam regni quam regis vitiis repudiatum est, res manebat, cum unus omnibus magistratibus imperaret.* Cic. de Legib. 3.

Libertatis autem initium inde magis, quia annum imperium Consulare factum est, quam quod diminutum quicquam sit ex regia potestate, omnia jura, omnia insignia primi Consules tenuere. Liv. 2. 1.

[g] *Plebi, cui ad eum diem summa ope inservitum erat.* Ibid. 21.

A Treatise on

writers differently relate it. All that *Dionysius* indeed and *Livy* say upon it, is, that a number of the best citizens were chosen from the commons to supply the vacancies [b]. But we cannot imagine, that an act of so great moment could pass without the special command and suffrage of the people, at a time, when nothing else of any moment passed without it: the reason of the thing, and the power of the people in all similar cases, must persuade us of the contrary.

The next fact, that relates to our question, is, the admission of *Appius Claudius* into the Senate. He was one of the Chiefs of the *Sabin* nation, who deserted to *Rome*, with a body of his friends, and dependents, to the number of five thousand; to whom the freedom of the city, and lands were publicly assigned, and to *Appius* himself, a place in the Senate. *Livy* does

[b] *Liv.* 2. 1. *Dionys.* 5. 13.

not

not say, by what authority this was done; but *Dionysius*, that it was by an order of the Senate and people [i]: that is, by a previous decree of the Senate, approved and ratified by an assembly of the commons: which was the legal and regular way of transacting all the public business, from the very beginning of the Republic, and continued generally to be so, in all quiet and peaceable times, to the end of it [k].

These are the onely examples of filling up the Senate, from the expulsion

[i] Ἀνθ' ὅν η βελὴ καὶ ὁ δῆμος εἰς τε τὰς παλαιάς αὐτὸν ἐνέργαψε. Dionys. l. 5. 40. Liv. 2. 16.

[k] Brutus ex S. Co. ad populum tulit. Liv. 2. 2.
Per intercessionem Collegarum, qui nullum plebiscitum nisi ex auctoritate Senatus, passuros se perferrи, ostendunt, discussum est. Liv. 4. 49.

Potestas in populo auctoritas in Senatu est. Cic. de Leg. 3.

Decreverunt Patres, ut cum populus regem jussisset, id sic ratum esset si patres auctores fierent. hodieque in legibus Magistratibusque rogandis, usurpatur idem jus, vi adempta, priusquam populus suffragium ineat, in incertum comitorum eventum patres auctores fiunt. Liv. 1. 17.

of the Kings, to the creation of the Censors: and though we are not directly informed, by what authority they were effected, yet it is certain, that it was by the intervention and power of the people; agreeably to the express testimony of *Cicero*, and the speech of *Canuleius* the Tribun, referred to by your Lordship, wherein it is declared, that from the extinction of the Regal government, the admission of all members into the Senate was given by *the command of the people* [1].

From these augmentations just mentioned, to the institution of the Censorship, there is an interval of sixty years or more, without the mention of any review or supply of the Senate whatsoever: and yet there must have been

[1] Deligerentur autem in id consilium ab universo populo, aditusque in illum summum ordinem omnium civium industriae ac virtuti pateret. Cic. pr. Sext. § 137.

Aut ab regibus lecti, aut post reges exactos, jussu populi. Liv. 4. 4.

some constant method of supplying it during that time, or it would have been wholly extinct. The Consuls, whose province it then was, to hold *the Census, and general lustration* of the citizens, as oft as they found it necessary, had, in consequence of that duty, the task also of settling the roll of the Senate at the same time. Yet there is no instance recorded, of the exercise of that power, or of any act relating to it, either by the admission or ejection of any Senators: so that the state of the Senate in this period is left wholly dark to us by the ancients, nor has been explained, as far as I know, by any of the moderns.

The most probable account of the matter is this; that the Senate began now to be regularly supplied by the annual Magistrates, who were instituted about this time, and chosen by the people. These were two *Quæstors* of *Patrician* families, and five *Tribuns* of the people, with two *Ædiles* of *Ple-*

beian

beian families; to which five more Tribuns were afterwards added: and if we suppose all these to have had an admission into the Senate by virtue of their office, and consequently, a right to be enrolled by the Consuls at the next lustrum, this would yield a competent supply to the ordinary vacancies of that assembly: which might receive some accession also from the *Decemviri*, who were not all Patri-cians, nor yet Senators perhaps, before their election to that magistracy. If this was the case, as I take it to have been, it will help us to account for the silence of authors about it, as being a thing, that succeeded of course, so as to have nothing in it remarkable, or what seemed to deserve a particular recital.

The office of *Quæstor*, which was instituted the first, is always mentioned by the ancients, as the first step of honor in the Republic, and what gave an entrance

entrance into the Senate [m]. As to the *Tribuns*, it has been taken for granted, on the authority of *Valerius Maximus*, that, on their first creation, they were not admitted into the Senate, but had seats placed for them before the door, in the vestibule [n]. But we may reasonably conclude, that a Magistrate so ambitious and powerful, who could controul, by his single negative, whatever passed within doors, would not long be content to sit without. *A. Gellius* says, that they were not made Senators before the law of *Atinius* [o]; who is supposed to be *C. Atinius Labeo*, Tribun of the people, A. U. 623 [p]: but that cannot pos-

[m] Quæstura, primus gradus honoris. Cic. in Ver. Act. i. 4.

[n] Illud quoque memoria repetendum est, quod Tribunis plebis intrare Curiam non licebat. ante valvas autem positis subselliis, decreta patrum attentissima cura examinabant. Val. Max. l. 2. c. 2. 7.

[o] Nam & Tribunis plebis Senatus habendi jus erat, quamquam Senatores non essent, ante Atinium Plebiscitum. A. Gell. 14. 8.

[p] Vid. Pighii Annales. A. U. 623.

sibly

fibly be true, since it is evident from the authority of *Dionysius*, that near four centuries before, the *Tribuns*, by the mere weight and great power of their office, had gained an actual admission into the Senate within two years after their first creation [q]: in which we find them debating and enforcing with great warmth the demands of the Commons, for a liberty of intermarriages with the nobles, and the choice of a *Plebeian Consul* [r]: so that the intent of this *Atinian* law could not be, as it is commonly understood, that the *Tribuns* should be Senators in virtue of their office, for that they had been from the beginning, but that for the future, they should always be chosen

Ταῦτα δὲ ὅρῶντες οἱ δῆμαρχοι. παρῆσαν γὰρ τῷ Συνέδρῳ, παρακληθέντες ὑπὸ τῶν ὑπάτων. Dionys. l. 7. 25.
A. U. 263.

Καὶ τότε ἔπεισαν ἡμᾶς οἱ Σύμβολοι τὸ αἰρχεῖον ἔασται παρελθεῖν εἰς τὴν βουλὴν. Ibid. 49.

[q] Ἐπειλα Συναχθέντες εἰς τὸ βουλευτήριον οἱ Σύνεδροι, παρόντων καὶ τῶν δημάρχων. Dionys. l. x. 11.

[r] Liv. 4. 1, 2, 3. Dionys. xi. 57.

out

out of the body of the Senate, or, which is the same thing, out of those, who had already born the office of *Quæstor.*

About thirteen years before the creation of the Censors, the Tribuns began to assume a right of summoning or convoking the Senate ; and of propounding to them whatever they thought proper [s]. A prerogative, which the Consuls alone had ever exercised before ; and which I take to be a clear proof of their being then members of the Senate : and I find also, that two Patricians, even of Consular dignity, were elected Tribuns of the people about the same time, in an extraordinary manner [t] : which can hardly be accounted for, without supposing this Magistracy to have had an admission into the Senate.

[s] Dionys. x. 31.

[t] Novi Tribuni plebis in cooptandis collegis, Patrum voluntatem foverunt : duos etiam Patricios Consularesque Sp. Tarpeium & A. Aterium cooptavere. Liv. 3. 65.

Some

Some few years before this, upon the death of one of the Consuls and the sickness of the other, at a time of great consternation in *Rome*, the supreme power and care of the public was committed to the *Ædiles* [v]: which great deference to their office, makes it reasonable to conclude, that these magistrates also were at this time in the Senate, as they unquestionably were within a short time after. But the warm contest hinted above, about the right of electing a *Plebeian Consul*, which continued on foot for a long time, seems to demonstrate the truth of my opinion; it being wholly incredible, that the Commons should demand to have one of their body placed at the head of the Senate, before they had obtained so much as an entrance into it, for any of the other plebeian magistrates.

[v] Circuitio & cura *Ædilium* plebei erant. ad eos summa rerum ac majestas Consularis imperii venerat. Liv. 3. 6, 7.

I cannot omit the mention of one fact more, not foreign to our present purpose, though it did not happen till about two hundred years later; which is this; the *Flamen Dialis*, or sovereign priest of *Jupiter*, revived an ancient pretension to a seat in the Senate, in right of his office; which, by the indolence of his predecessors, had not been claimed or enjoyed for many generations. The *Prætor* rejected his claim, nor would suffer him to sit in that assembly: but upon his appeal to the *Tribuns*, that is, to the people, his right was confirmed, and he was allowed to take his place as a Senator [x]. This case shews, that the privilege of the Senate might be annexed to an office, without any notice taken of it by the historians; for we have not the least hint from any of them, of the origin of this *Flamen's* right; nor any mention of him as a

[x] Liv. 27. 8.

E Senator,

Senator, but on this very occasion : though by the manner of his appeal, the claim seems to have been grounded on some old grant from the people.

But it may perhaps be objected, that though the annual magistrates might furnish a tolerable supply to the ordinary vacancies of the Senate, yet there must have been some other method of providing for the extraordinary deficiencies, made by the calamitous accidents of wars abroad, or sickness at home, of which there are several instances in the Roman history. In answer to which, it must be owned, that the Senate, in such particular exigencies, would demand a larger supply, than the public offices could furnish : and the method of supplying it seems to have been regulated by what the first Consuls did, upon the first enrollment and completion of the Senate : for this was probably the standing precedent ; agreeably to which,

all the future Consuls, as we may reasonably presume, used to pitch upon a number of the best and most reputable citizens of the Equestrian rank, to be proposed to the choice and approbation of the people in their general assembly; who, by approving and confirming the list, gave them a complete and immediate right to the rank and title of Senators during life.

This will appear still more probable, by reflecting on a fact or two delivered by all the Historians. *Sp. Mælius*, who was attempting to make himself King, was one of the most wealthy and popular Commoners of the Equestrian order, yet from *Livy's* account, it is plain, that he was a Senator: for his first ambition, it is said, was onely to be chosen Consul, which seems to imply it: but the Dictator's speech concerning him directly asserts it: for he observes with indignation, that *he, who had not been so much as a Tribun, and whom, on the account*

*A Treatise on
of his birth, the city could hardly digest
as a Senator, should hope to be endured
as a King [y].*

About forty years after this, *P. Lici-nius Calvus*, another eminent commo-
ner, was elected one of the military
Tribuns with consular authority. He
was the first plebeian, who had been
raised to that dignity: but history has
not informed us, what particular me-
rit it was, that advanced him to it:
for as *Livy* observes, *he had passed
through none of the public offices, and
was only an old Senator of great age.*
[z] If we should ask then, how these
two Plebeians came to be made Sena-
tors, without having born any magi-
stracy, there is no answer so probable,
as that they were added to the roll of
the Senate, with other eminent citizens,

[y] Ex equestris ordine, ut illis temporibus, præ-
dives—cui Tribunatus plebis magis optandus quam
sperandus—ut quem Senatorem concoquere civitas
vix posset, regem ferret. *Liv. 4. 13, 15.*

[z] Vir nullis honoribus usus, vetus tamen Se-
nator & ætate jam gravis. *Liv. 5. 12.*

by the command of the people, on some extraordinary creation. For if the nomination had wholly depended on the will of any *Patrician* magistrate, it is scarce to be imagined, that he would have bestowed that honor on *Plebeian* Families.

I shall proceede in the next place, to consider the State of the Senate, after the establishment of the Censors, and try to reconcile my hypothesis, with the great power and authority delegated to these magistrates in the affair of creating Senators, in which the whole Difficulty of the present quæstion consists.

The people were now, as the ancient writers tell us, the sole arbiters of rewards and punishments, on the distribution of which depends the success of all governments; and in short, had the supreme power over all persons and all causes whatsoever [a].

E 3 These
[a] Quum illi & de Sempronio & de omnibus summam

These accounts leave no room for any exception, and make it vain to suppose, that the commons, in this height of power, would establish a private jurisdiction, to act independently and exclusively of their supremacy. But besides the proofs already alledged of their universal prerogative, we have clear evidence likewise of their special right in this very case of making Senators. The testimony of *Cicero* produced above, is decisive: and the frequent declarations, which he makes, both to the Senate and the people, that he owed all his honors, and particularly his seat in the Senate, to the favour of the people [b], are unquestionable proofs

of
the
populi
Romani
potestatem
esse dicerent.

Liv. 4. 42.

Populus Romanus, cuius est summa potestas omnium rerum. Cic. de Harusp. respons. 6. Vide Polyb. l. 6. 462, B. Τιμῆς γάρ ἐστι καὶ τιμωρίας ἐν τῇ πολει-τείᾳ μόνος οὐδῆμος κύριος, &c.

[b] *Rex denique ecquis est, qui Senatorem Populi Romani tecto ac domo non invitet? qui honos non homini solum habetur, sed primum Populo Ro-*
mano,

of it. For such speeches delivered in public, and in the face of the Censors themselves, must have been considered as an insult on their authority, and provoked their animadversion, if they had not been confessedly and indisputably true. The testimony of *Cicero* is confirmed also by *Livy* [c], which gives occasion to *M. Vertot* to observe, *that the sole right of creating Senators is attributed to the people by two, the most celebrated writers of the republic.* but after the acknowledgment of so great an authority, he affirms, too inconsiderately, in the very next words,

E 4. *that*

mano, cuius beneficio in hunc ordinem venimus. In Ver. l. 4. xi.

Si populum Romanum, cuius honoribus in amplissimo concilio & in altissimo gradu dignitatis, atque in hac omnium terrarum arce collocati sumus. Postredit. in Sen. i.

Et palam fortissime atque honestissime dicerent, se potuisse judicio populi Romani in amplissimum locum pervenire, si sua studia ad honores petendos conferre voluissent. Pr. Cluen. 56.

[c] *Aut ab regibus lecti, [in Senatum] aut post reges exactos, jussu populi. Liv. 4. 4.*

that all the facts and examples of history are clearly against it [d]. For whatever those facts may seem to intimate, on a slight view, and at this distance of time, yet it is certain, that they must admit such an interpretation, as is consistent with a testimony so precise and authentic.

But in truth, the people's right of chusing magistrates, was the same with that of chusing Senators; since the magistrates by virtue of their office obtained a place of course in the Senate: that is, *the Quæstars, Tribuns of the people, AEdiles, Prætors, Consuls*; for this was the regular gradation or steps of honor, which every man, in the course of his ambition, was to ascend in their Order. A method, contrived with great prudence and policy; by which no man could be entrusted with the supreme power, and the reins of government, till he had given a specimen of his abilities, through all the

[d] Reponse au Memoire de Ld. Stanhope.

inferior offices, and subordinate branches of it: and we find accordingly in the old Fasti or Annals, many examples of persons who had proceeded regularly through them all [e].

The young Patricians indeed, proud of their high birth, and trusting to the authority of their families, would often push at the higher offices, without the trouble of soliciting for the lower. But this was always resented and complained of by the Tribuns, as an infringement of the constitution; *that the nobles in their way to the Consulship, should jump over the intermediate steps, and slight the inferior honors of Aedile and Praetor:* as in the case of *T. Quintius Flamininus*, who from his first preferment of *Quæstor*, was elected consul by the authority of the Senate [f]: and it was

to

[e] *Q. Cassius Longinus* was chosen *Quæstor* A. U. 575. *Tribun of the people* 580. *Aedile* 583. *Praetor* 586. *Consul* 589. *Vide Pigh. Annales.*

[f] *Comitia per Tribunos pl. impediebantur,* quod *T. Quintium Flamininum Consulatum ex*

Quæ-

to correct this license and irregularity; that *Sylla* afterwards, by a special law, enjoined the obligation of passing through the inferior offices, as a necessary qualification for the consulate. But the practice itself did not derive it's origin from this *Cornelian* law, as your Lordship seems to intimate, but was grounded on a constitution or custom of ancient standing.

Let us examine then after all, what part really belonged to the Censors, in this affair of creating Senators. This magistracy was first instituted, A. U. 311. not to take any share of power from the people, but of trouble only from the Consuls: who now began to have more of it than they could possibly discharge: and the special business of these Censors, was to ease them of the task of holding the *Census* &

Quæstura petere non patiebantur. Jam Ædilitatem Præturamque fastidiri, nec per honorum gradus documentum sui dantes, nobiles homines tendere ad Consulatum, sed transcendendo media imis continuare. Liv. 3². 7.

Lustrum,

Lustrum, which the Consuls had not been able to do for seventeen years past: that is, to take a general review of the whole people, as oft as there should be occasion; to settle the several districts and divisions of the tribes; to assign to every citizen his proper rank and order, according to a valuation of his estate; and lastly, to call over the Senate, and make a fresh roll, by leaving out the names of the deceased, and adding those, who had acquired a right to fill their places; that is the magistrates, who had been elected into their offices since the last call.

But besides this task, which was purely ministerial, they had the particular cognizance and inspection of the manners of all the citizens, and in consequence of it, a power to censure or animadadvert upon any vice or immorality, in all orders of men whatsoever; which they took an oath to discharge without favour or affection. But this power reached no farther than

to

To inflict some publick mark of ignominy, on lewd and vicious persons, in proportion to the scandal, which they had given, by degrading or suspending them from the privileges of that particular rank, which they held in the city. This was their proper jurisdiction, and the foundation of their power over the Senate; by virtue of which, they frequently purged it of some of its unworthy and profligate members; by leaving out of the new roll, the names of those Senators, whom they found unworthy to sit in that august assembly, for the notoriety of their crimes; which they used commonly to assign, as the cause of their inflicting this disgrace [g]. There are many examples

[g] Censor-penes quem maiores nostri judicium Senatus de dignitate esse voluerunt. Cic. pro Dom.

51.

Hic annus Censuræ initium fuit; rei a parva origine ortæ: quæ deinde tanto incremento aucta est, ut morum disciplinæque Romanæ penes eam regimen, Senatus, Equitumque centuriæ, decoris dedecorisque discrimen sub ditione ejus magistratus. Liv. 4. 8.

Patrum memoria institutum fertur, ut Censores Senatu motis adscriberent notas. Id. 39. 4².

ples of Senators thus expelled by the Censors, generally for good reasons; yet sometimes through mere peevishness, envy or revenge [b]: but in such cases, there was always the liberty of an appeal to the final judgment of the people. So that the Censorian power, properly speaking, was not that of making or unmaking Senators, but of enrolling only those, whom the people had made; and of inspecting their manners, and animadverting upon their vices; over which they had a special jurisdiction delegated by the people. Their rule of censuring seems to have been grounded on an old maxim of the Roman policy, injoining, *that the*

to do no wrong, and to be a good example, and to yield.

[b] See the account of the Censorship of C. Claudius Nero, and M. Livius Salinator, in which they both peevishly affronted and disgraced each other, and were called to an account for their administration by one of the Tribuns. *Itaque ibi foedum certamen inquinandi famam alterius cum suæ famæ damno factum est.—Cn. Bæbius Tribunus plebis ad populum diem utrius dixit. Liv. 39. 37.*

Senate

Senate should be pure from all blemish, and an example of manners to all the other orders of the city : as we find it laid down by Cicero in his book of laws, which were drawn, as he tells us, from the plan of the Roman constitution [i].

It is certain, that several laws were made at different times to regulate the conduct of the Censors, of which we have now no remains. *Festus* speaks of one, not mentioned by any other writer, the *Ovinian law*; by which they were obliged, in making up the roll of the Senate, to take the best men of every order, chosen in an assembly of the *Curiæ* [k]. This law was probably made soon after the creation of the Censors, or as soon at least as they began to extend their power, and use

[i] *Censores probrum in Senatu ne relinquunto, Is ordo vitio careto. Ceteris specimen esto.* Cic. de Leg. 3.

[k] *Donec Ovinia Tribunitia intervenit, qua sanctum est, ut Censores ex omni ordine optimum quemque curiatim Senatu legerent, in Voc. Præteriti.*

it arbitrarily ; in order to reduce them to the original constitution. Cicero takes occasion to observe in one of his speeches, " that their ancestors had provided many checks and restraints on the power of the Censors : that their acts were often rescinded by a vote of the people : that the people by marking a man with infamy, or convicting him of any base crime, deprived him at once of all future honors, and of all return to the Senate ; but that the Censorian animadversion had no such effect ; and that the persons disgraced by it were commonly restored to the Senate, and sometimes made even Censors after it themselves." [l] and in another place he says, " that the judgment of the Censors had no other force, than of putting a man to the blush ; and that it was called ignominy, because it was merely nominal [m]."

[l] Pro Cluent. 42, 43, 44.

[m] Fragment. de Repub. l. 4.

L. Metellus was animadverted upon by the Censors, while he was *Quæstor*: yet, notwithstanding that disgrace, was chosen Tribun of the people; the year following, A. U. 540: in which office, he called the Censors to an account before the people, for the affront, which they had put upon him; but was hindered by the other Tribuns, from bringing that affair to a trial [n]. We find likewise *C. Claudius* and *T. Sempronius* called to an account before the people for their administration in the Censorship [o]: and in a dispute between themselves, about the assignment of a proper tribe to the sons of slaves made free, *Claudius* alledged, that no Censor could take from any citizen his right

[n] Extemplo Censoribus—a *L. Metello* Tribuno pleb. dies dicta ad populum est. Quæstorem eum proximo anno tribu moverant—sed novem tribunorum auxilio, vetiti causam in magistratu dicere. Liv. 24. 43.

[o] Non recusantibus Censoribus, quo minus pri-

of suffrage, without the express command of the people [o]. Q. Metellus, when Censor, left the name of Atinius, one of the Tribuns of the people, out of the roll of the Senate: but the Tribun, enraged by the affront, ordered the Censor to be seized and thrown down the Tarpeian rock; which would probably have been executed, if the other Tribuns had not rescued him. The same Tribun however took his revenge, by the solemn consecration of Metellus's goods [p]: Now these facts demonstrate, that the power of the Censors, instead of being

mo quoque tempore judicium de se populus faceret.
Liv. 43. 16.

[o] Negabat Claudio suffragii lationem injussu populi Censem cuiquam homini, nendum ordini universo adimere posse. Liv. 45. 15.

[p] Atqui C. Atinius, patrum memoria, bona Q. Metelli, qui eum ex Senatu Censor ejecerat—consecravit; foculo posito in rostris, adhibitoque Tibicine. Cic. pr. Dom. 47.

Q. Metellus—ab C. Atinio Labeone—revertens e campo, meridianō tempore, vacuo foro & Capitolio, ad Tarpeium raptus ut præcipitaretur, &c. Plin. Hist. Nat. 7. 44.

absolute, as your Lordship contends, in the case of making Senators, had in reality little or no share in it; and was much limited also and restrained, in what is allowed to be their proper jurisdiction, the affair even of unmaking or degrading them.

Let us inquire therefore, on what reasons *M. Vertot* has so peremptorily declared, that the facts and examples of history are contrary to this notion of the people's power, in the case under debate. By these facts, he means the instances of Senators created and expelled by the sole authority of the Censors, without any apparent consent or interposition of the people: and so far it must be allowed, that they seldom made a new roll of the Senate, without striking several out of it, as either their own tempers, or the particular condition of the times, disposed them to more or less severity: and their administration was usually reckoned moderate, when *three or four* only

only were so disgraced by them [q]. But it must always be remembered, that the ejected Senators had the right of an appeal and redress from the people, if they thought themselves injured; and if they did not take the benefit of it, we may impute it to a distrust of their cause, and a consciousness of their guilt.

Cato the elder, when Censor, struck seven out of the roll of the Senate: and among the rest, one of Consular dignity; the brother of the great *T. Flamininus*. But the high quality of the person disgraced, obliged *Cato* to set forth the greatness of his crime in a severe speech: on which *Livy* remarks, "that, if he had made the same speech, by way of accusation, to the people, before his animadversion, which he made afterwards,

[q] Censores T. Quinctius Flamininus & M. Claudius Marcellus Senatum perlegerunt. quatuor soli præteriti sunt, nemo curuli honore usus, & in equitatu recensendo mitis admodum censura fuit. Liv. 38. 28.

" to justify it, even *T. Flamininus*
" himself, if he had then been Censor,
" as he was in the preceding Lustrum,
" could not have kept his brother in
" the Senate." In the end of this
speech, *Cato* puts the ejected Senator
in mind, " that, if he denied the fact,
" with which he was charged, he might
" defend himself, by bringing the mat-
" ter to a trial ; if not, no body would
" think him too severely treated [r]."
This case shews, what was the legal and
ordinary method of relief, as well as the
reason, why few perhaps were disposed
to make use of it.

The Censors were generally men of
the first dignity in the city, and always
of Consular rank ; so that their acts
had naturally a great weight : and the
severity of their discipline was consider-
ed by the honest of all orders, as a great
guard and security to the Republic :
and when they acted even on spitefull

[r] Liv. 39. 42, 43.

and

and peevish motives, yet the parties injured would not always take the trouble of going through a trial, since they could be relieved without it, either by the next Censors, as they commonly were [s] ; or by obtaining a new magistracy, in the next annual elections ; by which they were restored of course to the Senate. But if any of these animadversions continued to have a lasting effect, it was always owing to an universal approbation of them from all the orders of the city : for whenever they appeared to be violent or grossly unjust, neither the Senate nor the people would endure them for a moment.

Thus when *Appius Claudius* the Censor, [A. U. 441.] upon some extraordinary deficiency in the Senate, filled up the new roll with some of those citizens, whose *grandfathers had been slaves*, contrary to the established

[s] Eorum notam Successores plerumque solvebant. Ascon. in Divinat. 3.

rule and practice of the city, there was not a soul, as *Livy* says, who looked upon that enrollment as valid [t]: and the first thing, that the next Consuls did, was, to annul it by an appeal to the people, and to reduce the Senate to the old list, as it was left by the preceding Censors [v].

The office of Censor, at its first institution, was designed to be *quinquennial*, or to continue in the same hands for five years; but this length of magistracy, unknown before to *Rome*, was reduced soon after to one year and an half, by a law of *Mamercus Aemilius*, the Dictator: which regulation, tho' popular, provoked the Censors so highly, that in revenge for this abridg-

[t] Appii Claudii censura vires nacta, qui Senatum primus libertinorum filiis inquinaverat. & posteaquam eam lectionem nemo ratam habuit.—*Liv.* 9. 46.

[v] Itaque Consules—initio anni, questi apud populum deformatum ordinem prava lectione Senatus, —negaverunt eam lectionem se, quæ sine recti præiuste discrimine, ad gratiam libidinemque facta es-
tet, observaturos.—*Ibid.* 30.

ment

ment of their authority, they put the last disgrace upon the Dictator himself, by turning him even out of his tribe, and depriving him of his vote as a citizen. But a proceeding so extravagant was immediately over-ruled, nor suffered to have the least effect: and the people were so enraged at it, that they would have torn the Censors in pieces, had they not been restrained by the authority of *Mamercus* himself [x]: who, within eight years after, was made Dictator again for the third time. So little regard was paid, as *Livy* observes, to the Censorian mark of disgrace, when it was inflicted unworthily [y]: and about a century after, we find one of the Tribuns speaking of this same fact, as a proof of the mischief, which the vio-

[x] Populi certe tanta indignatio coorta dicitur, ut vis a Censoribus nullius auctoritate præterquam ipsius Mamerci, deterreri quiverit. *Liv.* 4. 25.

[y] Adeo—nihil censoria animadversio effecit, quo minus regimen rerum ex notata indigne domo peteretur. *Ibid.* 30.

I have hitherto been explaining the ordinary power and jurisdiction of the Censors, as far as it related to the creation of Senators. But as under the Consuls, so under these Magistrates, there must have been, as I observed, some extraordinary creations, made to supply the extraordinary vacancies, occasioned by wars and contagious distempers: and in all such cases, it was certainly a standing rule, to draw out a list of the best men from all the orders of the city, to be proposed to the suffrage and approbation of the people, in their general assembly.

We meet with no account indeed of any such extraordinary creation, under the authority of the Censors; nor even of any ordinary one, till one

[z] Tenuit Æmilia lex violentos illos Censores—
qui, quid iste magistratus in Repub. mali facere pos-
sent, indicarunt, &c. Ib. 34.

hundred and twenty years after their first institution, in the Censorship of *Appius Claudius*: yet from the reason of the thing we may fairly presume, that there had been several instances of both kinds. We read of a Dictator chosen for that very purpose, A. U. 537, at a time, when there were no Censors in office, and when the Senate was reduced by the war with *Hannibal*, to less than half of its usual complement. This Dictator, *M. Fabius Buteo*, being a prudent and moderate man, resolved to take no step beyond the ordinary forms. "Wherefore he immediately ascended "the Rostra, and in an assembly of "the people, called thither for that "occasion, ordered the last Censorian "roll of the Senate to be transcribed "and read over, without striking one "name out of it: and gave this rea- "son for it, that it was not fit for a "single man, to pass a judgment up- "on the reputation and manners of "Senators,

" Senators, which belonged by law to
" two. Then in the place of the dead,
" he first added those, who had born
" any *Curule Magistracy* since the last
" call; after them, the *Tribuni, Aediles*
" and *Quæstors*; and lastly those,
" who had not born any of these of-
" fices, but had served with honor in
" the wars, and could shew spoils taken
" from the enemy, or a Civic crown:
" and having thus added an hundred
" and seventy seven new members to
" the old list, with the universal ap-
" probation of the assembly, he laid
" down his office [a].

M. Vertot argues, that this nomi-
nation of Senators was the pure act and
deed of the Dictator, or otherwise there
could be no reason to praise him for it:
which he confirms, by shewing also,
on the other hand, that the blame of
a bad choice was imputed likewise to
the magistrate; as in the case of *Ap-*

[a] *Liv.* 23. 33.

pius *Claudius*, when he attempted to introduce the grandsons of slaves into the Senate [b]. But this reasoning is not well grounded, for though praise or blame would naturally fall upon the magistrate, in proportion, as what he recommended and attempted to enact, happened to deserve the one or the other, yet these two cases shew, that the approbation or dislike of the people did not terminate in the mere praise or dispraise of the magistrate; but affected the very essence and validity of his act: for in the first case, where the people approved, the act stood firm, and had it's effect; but in the other, where they disapproved, it was presently annulled and rescinded.

There was another extraordinary creation of Senators made by *Sylla*, the Dictator, in order to fill up the Senate, exhausted by his proscriptions

[b] See Réponse au Mémoire de Lord Stanhope.

and

and civil wars, with three hundred new members from the Equestrian rank: the choice of whom he gave intirely to the people, in an assembly of their tribes, which of all elections was the most free. His design without doubt was, to make them some amends for his other violences, by paying this respect to their ancient rights and liberties [c].

There is a third augmentation also, prior to that of *Sylla*, mentioned by the epitomizer of *Livy*, and ascribed to *C. Gracchus* [d]. By which six hundred of the Equestrian rank are said to have been added to the Senate at once. But this cannot be true, as being contrary to the testimony of all the old writers, who speak of nothing more, than that the right of judicature, which had belonged to the Senate, from the time of the Kings, was transferred by *Gracchus* to the *Knights*,

[c] Appian de Bell. Civ. l. i. p. 413.

[d] Lib. 60.

in common with the Senators; so that three hundred were to be taken from each order, out of whom the judges in all causes should be chosen promiscuously by lot [e]. This was the act of *C. Gracchus*, which continued in force to the time of *Sylla*; and it was this, probably, which led that writer into his mistake: but if any augmentation of the Senate had been made at the same time, it is certain, that it must have been made by the power of the people; which no man ever asserted so strenuously, or carried so high, as this very *Gracchus*.

These extraordinary creations of Senators, made with the consent and approbation of the people, in their general assemblies, may be presumed to have passed according to the forms of the constitution, and consequently,

[e] Μόνοι γαρ ἔχειν τὰς δίκας, [οἱ συγχλήταιοι] καὶ διὰ τῦτο Φοβεροὶ τῷ σῆμαρ καὶ τοῖς ἵππεῦσιν ἡσαν. ὁ δὲ τριακοσίους τῶν ἵππέων προσκατέβει αὐλοῖς, οὐτε τριακοσίοις, καὶ τὰς χούσεις κοινὰς τοὺς ἐξακοσίους ἵπποιςε. Plutar. in Vit. C. Gracch.

point

point out to us the regular method of proceeding in ordinary cases. But the augmentation made by *Sylla*, as it enlarged the number of the Senators beyond what it had ever been, so it gave an admission to many, who were unworthy of that honor [f]: and the general corruption of manners, introduced by the confusion and licence of those turbulent times, made it necessary to revive the office and ancient discipline of the Censors [g], which had lain dormant for seventeen years past: in which the new Censors, *L. Gellius*, and *Cn. Cornelius Lentulus*, exercised their power with more severity, than had ever been known before: for they left *sixty four* out of the roll of the Senate; of whom *C. Antonius* was one, who, within seven years

[f] *Judicium culpa atque dedecore etiam Censorium nomen, quod asperius antea populo videri solebat, id nunc poscitur, id iam populare atque plausibile factum est.* Cic. in *Caecili. Divinat.* 3.

Βιλίν τε γὰς ἐκ τῶν ἐπιτυχόντων αὐθέωπων συνίστηται, Σύλλα. Dionys. l. 5. 57.

after,

after, was chosen Consul together with *Cicero*; and *P. Lentulus* another, who, as I have said above, was chosen Prætor again after that disgrace, and in that office, put to death for conspiring with *Catiline*. *Cicero* speaks of several more, who were degraded by the same Censors, for a charge of bribery and extortion in their judicial capacity; yet were all, notwithstanding restored to the Senate, but acquitted also afterwards of those very crimes in a legal trial [A].

The severity of this Censorship furnished a pretext not long after to *P. Clodius*, for procuring a law, to prohibit the Censors, from striking any one out of the roll of the Senate, or disgracing him in any manner, upon the report of common fame, or the notoriety of any crime, till he had been formally accused and found guilty by

[b] Quos autem ipse L. Gellius & Cn. Lentulus, duo Censores—futi & captarum pecuniarum nomine notaverunt: ij non modo in Senatum redierunt, sed etiam illarum ipsarum rerum judiciis absoluti sunt. Cic. pr. Cluent. 42.

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the

A Treatise on the common judgment of both the Censors [i]. Cicero frequently inveighs against this law, and reflects severely on Clodius, for abridging or abolishing a salutary power, that had subsisted four hundred years, and was necessary to support the credit and dignity of the Senate [k]. But in this, perhaps, he was influenced rather by his resentment against his inveterate enemy, the author of it, than by any iniquity of the law itself, which seems to have been a reasonable one in a free state.

Now from all these facts and testimonies we may collect, what was the proper part of the Censors in the affair of creating Senators. For in the ordinary way of making them, they had nothing more to do, than to enroll the

[i] Τοῖς δὲ Τιμηταῖς ἀπηγόρευσε, μητ' ἀπαλεῖφειν ἐκ τίναις τέλες, μητ' ἀτιμάζειν μηδενα, χωρὶς οὐ εἴτις παρ' αὐτοτέροις σφίσι κρίθεις ἀλοίη. Dio. l. 37. p. 66. E.

[k] Ab eodem homine, in stupris inauditis, nefariisque versato, vetus illa magistra pudoris & modestiae, severitas censoria sublata est. In Pison. 4. pr. Sext. 25.

names of those, who had born the public offices, since the last call or review of the Senate: and to degrade them, was to leave them onely out of the roll, when by the notoriety of their crimes, they had shewn themselves unworthy of that high rank, to which the Roman people had advanced them. But that they had no right of creating them, is plain from the case of the *Flamen Dialis*; who upon the opposition made to his claim, did not seek redress from the Censors, but the Tribuns; that is, from the people, as the sovereign judges of the affair. Lastly, the description given by *Cicero*, of the Censorian jurisdiction in all it's branches, is exactly conformable to my hypothesis: for he assigns them no part in the creation of Senators, nor any other power over that body, than what flowed from their right of inspecting the manners of all the citizens. *Let them govern*, says he, *the*

But I must not forget to acknowledge, that, though the public magistrates had a right, by virtue of their office, to a place in the Senate, yet they could not, in a strict sense, be esteemed complete Senators, till they had been enrolled by the Censors at the next lustrum. This is the sole reason, for which the writers commonly ascribe an absolute power to the Censors in the case of making Senators; not considering, that the enrollment was but a matter of form, which was never denied or could be denied to any, but for some notorious immorality: and that a right of creating and degrading Senators by a plenitude of power, is a quite different thing, from that of enrolling onely those, whom others had created, or rejecting them

[l] *Mores populi regunto: probrum in Senatu
ne relinquonto.* Cic. de Leg. 3. 3.

for

for a charge of crimes, which had rendered them unworthy of that honor, to which they had been raised by a different authority. For the part of enrolling or striking out the names of Senators, was all that the Censors had to do in this affair, in which they were still subject to the final judgement of the people, and liable to be obstructed in the discharge of it by any of the Tribuns [m].

Besides this task of enrolling the Senators, and inspecting their manners, it was a part likewise of the Censorian jurisdiction, *to let out to farm all the lands, revenues, and customs of the Republic; and to contract with artificers, for the charge of building and repairing all the public works and ædifices, both in Rome and the colonies of*

[m] Dio. l. 37. p. 33. D. Cn. Tremellius Tribunus, quia lectus non erat in Senatum, intercessit. Liv. 45. 15.

Italy [n]. Now in this branch of their office, it is certain, that they acted merely under the authority of the people, and were prohibited by law, *to let out any of the revenues, except in the Rostra, under the immediate inspection, and in the very presence of the people [o].* In consequence of which, when *Fulvius Flaccus*, one of the Censors, was ordering some great and expensive works, more arbitrarily, than the law would regularly warrant, his Colleague *Postumius* refused to join with him, and declared, that he would not engage himself in any contracts, to the waste of the public treasure, *without an express order of the Senate and*

[n] *Censores interim Romæ—Sarta tecta acriter & cum summa fide exegerunt, viam e foro Boario ad Veneris, & circa foros publicos & ædem Matris magnæ in Palatio faciendam locaverunt. Vectigal etiam novum ex Salaria annona statuerunt, &c.*
Liv. 29. 37. Polyb. I. 6. 464. C.

[o] *Censoribus Vectigalia locare, nisi in conspectu populi Romani non licet. Cic. de Leg. Agrar. I. 3. Vectigalia nusquam locare licet, nisi ex hoc loco, [ex Rostris] hac vestrum frequentia.* Ib. 2. 21.

the

the people, whose treasure it was [p]. If the Censors then, in these inferior articles of their administration, were obliged to act under the immediate controul and inspection of the people, and as ministers onely of the people's will, we may reasonably infer, that they could not act in any other capacity, in the more important affair, of making and unmaking Senators.

Again, in the general census and review of the city, held by them every five years, though every single citizen was particularly summoned and enrolled by name in his proper tribe, as a freeman of *Rome*, yet that solemn enrollment, as *Cicero* tells us, did not confirm any man's right to a citizenship, but signified onely, that he had passed for a citizen at that time [q].

[p] Alter ex iis Fulvius Flaccus, (nam Postumius nihil nisi Senatus Romani populive jussu, se locaturum ipsorum pecunia dicebat) Jovis ædem Pisauri & Fundis, &c. Liv. 41. 27.

[q] Sed quoniam Census non jus civitatis confirmat, ac tantummodo indicat, eum, qui sit census, ita se jam tum gessisse pro cive. Cic. pr. Arch. 5.

Because the proper power of determining that right resided always in the people [r]: whence we may conclude likewise by a parity of reason, that the Censorian roll of the Senate did not either confer or take away any one's right to that high order, unless it were confirmed, either by the presumed consent, or express command of the Roman people.

But though the magistrates of the city had a right to a place and vote in the Senate, as well during their office, as after it, and before they were put upon the roll by the Censors, yet they had not probably a right, to speak or debate there on any question, at least in the earlier times of the Republic. For this seems to have been the original distinction between them and the ancient Senators, as it is plainly intimated in the *formule* of the Consular

[r] Mutines etiam Civis Rom. factus, rogatione ab Tribunis pl. ex auctoritate Patrum, ad plebem lata. Liv. x. 52.

edict, sent abroad to summon the Senate, which was addressed to all Senators, and to those, who had a right to vote in the Senate [s]. From which distinction, these last, who had only a right to vote, were called, by way of ridicule, *Pedarians*; because they signified their votes by their feet, not their tongues; and upon every division of the house, went over to the side of those, whose opinion they approved [t]. It was in allusion to this old custom, which seems however to have been wholly dropt in the later ages of the Republic, that the mute part of the Senate continued still to be

[s] *Consules edixerunt, quoties in Senatum vocassent, uti Senatores, quibusque in Senatu dicere sententiam liceret, ad portam Capenam convenienter.* Liv. 23. 32. it. 36. 3. Festus in voc. *Senatores*—A. Gell. 1. 3. 18.

[t] *Non pauci sunt qui arbitrantur Pedarios* Senators appellatos, qui sententiam in Senatu non verbis dicerent, sed in alienam sententiam pedibus irent. &c. Vid. A. Gell. ibid.

Ita appellatur, quia tacitus transundo ad eum, cuius sententiam probat, quid sentiat, indicat. Fest. in *Pedarius*—

called by the name of *Pedarians*, as we learn from *Cicero*, who, in giving an account to *Atticus*, of a certain debate and decree of the Senate upon it, says, that *it was made with the eager and general concurrence of the Pedarians, though against the authority of all the Consulars* [v].

From the distinction, signified above, in the formule of summoning the Senate, it may not perhaps be improbable, that on certain urgent occasions, in which an extraordinary dispatch or secrecy was required in their counsils, the latter part of the edict might be omitted, and none but the old and proper Senators called to the meeting: and if this was the case, as some writers have imagined [x], it will clear up the difficulty of a story in *Valerius Maximus*, which has greatly perplexed all

[v] Est enim illud S. C. summa Pedariorum voluntate, nullius nostrum auctoritate factum. ad Att.

I. 19.

[x] Vid. Pighii Annales. Tom. I. p. 72.

thoſe,

those, who have treated this question, and is thus related; “*Q. Fabius Maximus*, on his return from the Senate, happening to meet with *P. Crassus*, told him, by way of news, what had been resolved secretly about the *Punic war*, remembering, that *Crassus* had been *Quæstor* three years before, and not knowing, that he had not yet been put upon the roll of the Censors, and so had no right to be in the Senate: for which *Fabius* was severely reprimanded by the Consuls [y].” For *Valerius* must not be understood to assert, that the *Quæstors* had no right to an admission into the Senate, till they were enrolled by the Censors: since it appears from unquestionable facts and testimonies, drawn from the practice, at least, of the later ages of the Republic, that they had not onely an entrance and

[y] Val. Max. 2. 2.

vote

vote in it, but a free liberty of speaking also, or debating on all quæstions: so that I see no way of accounting for the offence committed by *Fabius*, in giving part of the deliberation to *P. Crassus*, but that it was one of that *secret kind* [z], to which the old Senators onely used to be summoned in the early ages.

[z] *J. Capitolinus* mentions a decree of the Senate of this *secret kind*, which he calls *S. C. tacitum*, and says, that the use of them among the ancients was derived from the necessities of the public, when upon some imminent danger from enemies, the Senate was either driven to some low and mean expedients, or to such measures, as were proper to be executed before they were published, or such as they had a mind to keep secret even from friends; on which occasions they commonly recurred to a *tacit decree*, from which they excluded their clerks and servants, performing that part themselves, lest any thing should get abroad. *Capitolin. de Gordianis*, c. 12. In the early times of the Republic there are several instances mentioned by historians, of such private meetings of the Senate, summoned by the Consuls to their own houses, to which none but the old or proper Senators were admitted, and of which the Tribuns usually complained. *Vid. Dionys. l. x. 40. l. xi. 55, 57.*

But

But that the *Quæstors* had a direct admission into the Senate, and were styled and treated as Senators, and had a liberty also of speaking in their turn, as well as the rest, is evident, as I have said, from many clear facts and testimonies. For instance; *C. Marius*, as the same *Valerius* says, not being able to procure any magistracy in *Arpinum*, his native city, ventured to sue for the *Quæstorship* at *Rome*, which he obtained at last *after many repulses, and so forced his way into the Senate, rather than came into it* [a]. *Cicero*, after he had been *Quæstor*, being elected *Ædile*, as soon as he was capable, declares in one of his speeches, how by that advancement, he had gained an *higher rank and earlier turn of delivering his opinion in the Senate* [b]: which implies, that he had a right of

[a] *Patientia deinde repulsarum, irrupt magis in Curiam quam venit.* — *Id. l. 6. 9. 14.*

[b] *Antiquiorem in Senatu sententiæ dicendæ locum. in Verr. 5. 14.*

speaking

speaking there before, when *Quæstor*, though later onely in point of time, and after the other magistrates. In another speech, he stiles *P. Clodius*, a Senator, while he was onely of *Quæstorian* rank [c]: and in a congratulatory letter to *Curio* at *Rome*, upon his election to the Tribune, taking occasion to renew a request, which he had made to him in former letters, when he had onely been *Quæstor*, he says, *that he had asked it of him before, as of a Senator of the noblest birth, and a youth of the greatest interest, but now of a Tribun of the people, who had the power to grant what he asked* [d]. Lastly, *M. Cato*, as *Plutarch* writes, when he was *Quæstor* of the city, never failed to attend the Senate, for fear, that any thing should pass in his absence to the detriment of

[c] Adoptat annos viginti natus Senatorem. pr. Dom. 13, 14.

[d] Itemque petivi saepius per litteras, sed tum quasi a Senatore Nobilissimo—nunc a Tribuno plebis. Ep. Fam. 2. 7.

the public treasure, of which he was then the guardian [e]: which seems to imply, that he was not onely a Senator in virtue of his office, but had the liberty of acting or speaking there, if he had found occasion.

Before I put an end to my argument, I must add a word or two, on what your Lordship has incidentally touched, *the number of the Senate, and the qualifications of a certain age and estate*, required in it's members by law.

As to it's number, it is commonly supposed to have been limited to *three hundred*, from the time of the Kings, to that of the *Gracchi*. But this must not be taken too strictly: it generally had that number, or thereabouts, and upon any remarkable deficiency, was filled

[e] Plutar. in Vit. Caton.

Cicero likewise in reckoning up the number of Senators, who were in Pompey's camp, distinguishes them by their several ranks, of *Consular, Praetorian, Aedilician, Tribunitian, and Quæstorian Senators.* Philip. 13. 14.

up again to that complement by an extraordinary creation. But as the number of the public magistrates increased with the increase of their conquests and dominions, so the number of the Senate, which was supplied of course by those magistrates, must be liable also to some variation. *Sylla*, as we have seen above, when it was particularly exhausted, added *three hundred* to it at once from the Equestrian order : which might probably raise the whole number to about *five hundred* : and in this state it seems to have continued, till the subversion of their liberty by *J. Cæsar*. For *Cicero*, in an account of a particular debate, in one of his letters to *Atticus*, mentions *four hundred and fifteen* to have been present at it, which he calls *a full house* [f].

[f] Cum decerneretur frequenti Senatu—ut Consules populum cohortarentur ad rogationem accipiendam, homines ad xv Curioni nullum S. C. facienti assenserunt ; ex altera parte facile cccc. fuerunt. ad Att. l. i. 14.

That

That there was a certain age also required for a Senator, is often intimated by the old writers, tho' none of them have expressly signified what it was. The legal age for entring into the military service, was settled by *Servius Tullius* at seventeen years [g]: and they were obliged, as *Polybius* tells us, to serve ten years in the wars, before they could pretend to any civil magistracy [b]. This fixes the proper age of suing for the *Quæstorship*, or the first step of honor, to the twenty eighth year: and as this office gave an admission into the Senate, so the generality of the learned seem to have given the same date to the Senatorian age. Some writers indeed, on the authority of *Dion Cassius*, have imagined it to be twenty five years: not reflecting, that *Dio* mentions it there as a

[g] A. Gellius x. 28.

[b] Polyb. de Institut. rei milit. l. 6. p. 466.

*A Treatise on
regulation onely, proposed to Augustus,
by his favorite Mæcenas [i].*

But for my part, as far as I am able to judge, from the practice of the Republic in it's later times, I take the *Quæstorian age*, which was the same with the *Senatorian*, to have been *thirty years complete*. For *Cicero*, who declares in some of his speeches, that he had acquired all the honors of the city, without a repulse in any, and each in his proper year, or as soon as he could pretend to it by law, yet did not obtain the *Quæstorship*, till he had passed through his thirtieth year [k]: and when *Pompey* was created *Consul*, in an extraordinary manner, and by a special dispensation, in his *thirty sixth year*, without having born any of the subordinate dignities, *Cicero* observes

[i] Vid. Dio. l. 52. p. 477. Lips. de magistratib. Rom.

[k] *Cicero* was born A. U. 647. obtained the *Quæstorship* A. U. 677. which he administered the year following in *Sicily*. See Life of *Cicero*. Vol. i. p. 57. Quarto. Pighii Annales.

upon

upon it, that he was chosen into the highest magistracy, before he was qualified by the laws to hold even the lowest [?] : by which he means the *Ædileship*, which was the first office, that was properly called a magistracy, and what could not regularly be obtained, till after an interval of five years from the *Quæstorship*.

But my notion seems to be particularly confirmed by the tenor of certain laws, given at different times by the Roman governors, to foreign nations, relating to the regulation of their particular Senates: for the *Halesini*, a people of *Sicily*, as the story is told by *Cicero*, " having great quarrels among themselves, about the choice of their Senators, petitioned the Senate of *Rome*, to give them some laws concerning it. Upon which the Senate

[7] Quid tam singulare, quam ut legibus solitus ex S. consulte Consul ante fieret, quam ullum alium magistratum per leges capere licuisse. Cic. pr. Lege Manil. 21.

“ decreed, that their Praetor C. Clau-
 “ dius should provide laws for them
 “ accordingly; in which laws many
 “ things, he says, were enacted, con-
 “ cerning their age; that none, under
 “ thirty years; none, who exercised
 “ any trade; none, who had not an
 “ estate to a certain value, should be
 “ capable of the Senate.” Scipio like-
 wise, as he tells us, gave laws of the
 same kind, and with the same clauses
 in them, to the people of *Agrigentum*
 [m]: and lastly, *Pliny* mentions a law
 of *Pompey the Great*, given on a like
 occasion to the *Bithynians*, importing,
 “ that none should hold any magi-
 stracy, or be admitted into their Se-
 nate, under the age of thirty; and
 “ that all, who had born a magistra-
 cy, should be of course in the Se-

[m] C. Claudius—leges Halefinis dedit: in qui-
 bus multa sanxit de ætate hominum, ne qui minor
 triginta annis natu, &c.

Agrigentini de Senatu cooptando, Scipionis leges
 antiquas habent. in quibus & eadem illa Sancta sunt,
 &c. In. Verr. 2. 49.

“ nate.”

"nate [n]." All which clauses clearly indicate, from what source they were derived, and shew, what every one would readily imagine, that a Roman magistrate would naturally give them Roman laws.

Cicero says, that the laws concerning the age of magistrates were not very ancient; and were made, to check the forward ambition of the nobles, and to put all the citizens upon a level in the pursuit of honors [o]: and *Livy* tells us, that *L. Willius*, a Tribun of the people, was the first, who introduced them, A. U. 573, and acquired by it the surname of *Annalis* [p]:

H 2

But

[n] Cautum est, Domine, Pompeii legē, quæ Bithynis data est, ne quis capiat magistratum, neve sit in Senatu, qui minor annis xxx sit. & ut qui ceperint magistratum, sint in Senatu. Ad Trajan. Ep. l. x. 83.

Gravissimum autem est, cum superior factus sit ordine, inferiorem esse fortuna. Fam. 13. 5.

[o] Itaque majores nostri, veteres illi admodum antiqui, leges annales non habebant. &c. Phil. 5. 17.

[p] Eo anno rogatio primum lata est ab *L. Vitio*, Tribuno plebis, quot annos natū quemque magistratum

But long before this, we find an intimation of some laws or customs of that kind, subsisting in *Rome*: and in the very infancy of the Republic, when the Tribuns were first created, the Consuls declared in the Senate, that they would shortly correct the petulance of the young nobles, *by a law, which they had prepared, to settle the age of the Senators* [q].

There was another qualification also required, as necessary to a Senator; *an estate*, proper to support his rank; the proportion of which was settled by the law: but I do not anywhere find, when this was first instituted, nor even what it was, in any author before *Suetonius*; from whom we may collect, that it was settled at *eight hundred*

gistratum pterent, caperentque. inde cognomen familiæ inditum, ut Annales appellarentur. Lib. 40. 44.

[q] Ἀλλὰ καὶ εἰς τὸ λοιπὸν ἀνείρξουσιν αὐλῶν ἀκοσμίαν νόμῳ, τάξαντες ἀριθμὸν ἐπῷν δηνόσι τὰς βιλέωντας. ἔχειν. Dionys. l. 6. 66.

Senatorium gradum census adscendere fecit.

dred

dred *sestercia*, before the reign of *Augustus* [r] : which are computed to amount to between *six and seven thousand pounds* of our money ; and must not be taken, as it is by some, for an annual income, but the whole estate of a Senator, real and personal, as estimated by the survey and valuation of the Censors.

This proportion of wealth may seem perhaps too low, and unequal to the high rank and dignity of a Roman Senator ; but it must be considered only as the lowest, to which they could be reduced : for whenever they sunk below it, they forfeited their seats in the Senate. But as low as it now appears, it was certainly sufficient, at the time when it was first settled, to maintain a Senator suitably to his character, without the necessity of recurring to

[r] Senatorum censum ampliavit ; [Augustus] ac pro octingentorum millium summa, duodecies H S taxavit, supplevitque non habentibus. Sueton. in Aug. c. 41.

any trade or sordid arts of gain, which were likewise prohibited to him by the laws [s]. But the constitution itself does not seem to have been very ancient ; for we may easily imagine, that in those earlier days, when the chief

[s] Invitus Patribus ob novam legem, quam Q. Claudius Trib. pl. adversus Senatum, uno Patrum adjuvante, C. Flaminio, tulerat, ne quis Senator, quive Senatoris pater fuisset, maritimam navem, quæ plus quam trecentarum amphorarum esset, haberet. id satis habitum ad fructus ex agris vectandos. quaestus omnis Patribus indecorus visus. Liv. 21. 63. Noli metuere, Hortensi, ne quæraram, qui licuerit navem ædificare Senatori. Cic. Verr. 5. 18.

N. B. It is certain, that the Senators generally possessed a much larger proportion of wealth, than what is computed above : for in the fifth year of the second Punic war, A. U. 539. it was decreed by the Senate, that every citizen, who, at the preceding Census, or general taxation of the city, was found to be worth from 400 l. to 800 l. of our money, should furnish one sailor with six months pay towards manning the fleet ; that those, who were rated from 800 l. to 2400 l. should furnish three sailors, with a year's pay ; that those, who were rated from 2400, to 8000 l. should furnish five sailors ; that all, who were rated above that sum, should furnish seven ; and that all Senators should furnish eight, with a year's pay. Liv. 24. 11.

magistrate

magistrate was sometimes taken from the plough [t], and *Corn. Rufinus*, who had been *Dictator* and twice *Consul*, was expelled the Senate by *C. Fabricius* the Censor, A. U. 477, because he had ten pounds of silver plate in his house [v], no particular preference could be given to wealth in the choice of a Senator: and we find *Pliny* accordingly lamenting the unhappy change, when their Senators, their Judges, and their Magistrates came to be chosen by the value of their estates, since from that moment, all regard began to be lost for every thing, that was truly estimable and laudable in life [x]. This qualification of a

[t] Si illis temporibus natus essem, cum ab aratro arcesserantur, qui Consules fierent. Cic. pr. Rosc. Amer. 18.

[v] Ab eo Cornelium Rufinum duobus Consulatibus & Dictatura speciosissime functum, quod decem pondo argentea vasa comparasset, in ordine Senatorio retentum non esse.—Val. Max. l. 2. 9. A. Gall. 17. 21.

[x] Postquam Senator censu legi cœptus—peccatum jere vitæ prætia—Plin. Præem. in lib. 14. Hist. N.

Senatorial estate is referred to by *Cicero* in one of his letters, written in the time of *J. Cæsar's* administration, where he begs of one of his friends then in power, “not to suffer certain lands of *Curtius*, to be taken from him for the use of the soldiers, because without that estate, he could not hold the rank of a Senator, to which *Cæsar* himself had advanced him [y].”

It appears, from what has been dropt in the course of this argument, that there was some law also subsisting from the earliest times, concerning the extraction and descent of Senators; enjoining, that it should always be ingenuous; and as their morals were to be clear from all vice, so their birth likewise, from any stain of base blood: in consequence of which, when *Appius Claudius*, in his Censorship, attempted

[y] Hoc autem tempore eum Cæsar in Senatum legit: quem ordinem ille, ista possessione amissa, vix tueri potest. Ep. Fam. 13. 5.

to

to introduce *the grandsons of freed slaves* into the Senate, they were all, as we have seen above, immediately turned out again. For the *Romans* were so particularly careful, to preserve even their common citizens from any mixture of servile blood, that they prohibited all marriages between them and freed slaves, or their children: and it was decreed, as a special privilege and reward to one *Hispala, of libertine condition*, for her discovery of the impieties of the *Bacchanalian mysteries*, *that a citizen might take her to wife, without any disgrace and diminution of his rights [z]*. These distinctions indeed began to be disregarded towards the end of the Republic, with respect to the ordinary citizens, but were kept up to the last, with regard to the Senate. For *Cn. Lentulus* in his Censorship abovementioned, turned *Popilius*

[z] Utique ei ingenuo nubere liceret. neu quid ei qui eam duxisset, ob id fraudi ignominiae esset.
Liv. 39. 19.

out

out of the Senate, because his grandfather was a slave made free: yet he allowed him his rank at the public shews, with all the outward ornaments of a Senator [a]: and the Papian law, made in the end of Augustus's reign, permits all the citizens, excepting Senators and their children, to take wives of libertine condition [b].

These were some of the laws, by which the Censors were obliged to act, in the enrollment of the new, or the omission of old Senators: and when we read of any left out, without an intimation of their crime, it might probably be, for the want of one or other of these legal or customary qualifications.

The Censors continued in their office for eighteen months, and if we suppose them to have been created one-

[a] Nam Popillium, quod erat Libertini filius, in Senatum non legit: locum quidem Senatorium iudicis, & cetera ornamenta reliquit; & eum omni ignominia liberat. Cic. pr. Cluen. 47.

[b] Vid. Pighii Annal. A. U. 761.

ly every five years, the office must lie dormant for three years and an half. This is agreeable to what the generality of writers have delivered to us of the *Census*; that it was celebrated every *fifth year*: and as it was accompanied aways by a *lustration* of the people, so the word, *Lustrum*, has constantly been taken, both by the ancients and moderns, for a term of *five years*. Yet if we inquire into the real state of the case, we shall find no good ground for fixing so precise a signification to it; but on the contrary, that *the Census and Lustrum* were, for the most part, held irregularly and uncertainly, at very different and various intervals of time, as the particular exigencies of the state required. This is evident, not onely from the testimonies of the old writers, but from authentic records and monuments of the fact, *the Old Fasti*, inscribed on marble, and still preserved in the *Capitol of Rome*; exhibiting a succession of the Roman

magistrates, with a summary of their acts, from the earliest ages of the Republic.

For example, *Servius Tullius*, who first instituted the Census and Lustrum, and afterwards held four of them, began to reign A. U. 175, and reigned forty four years. *Tarquinius Superbus*, who succeeded him, held no Census at all.

The Consuls *P. Valerius* and *T. Lucretius* revived the institution of *Servius*, and held the fifth Census A. U. 245, and the Capitoline marbles, which are defective through the seven first Lustrums, mark the eighth to have happened A. U. 279, so that the three first, which were held by the Consuls, carry us through an interval of thirty four years.

The Censors were created A. U. 311, in which year they celebrated the eleventh Lustrum; which gives also near the same interval to the three

three last, which had been held by the Consuls.

The twentieth Lustrum, according to the Capitoline marbles, falls A. U. 390: whence we see, that under the Censors, who were created for the very purpose, of administering the Census and Lustrations of the people, yet the nine first of their Lustrums, one with another, take up each of them very near nine years.

The last Lustrum, during the liberty of the Republic, was held by the Censors *Appius Claudius* and *L. Piso*, A. U. 703, and was the seventy first: so that if we compute from the eleventh, or the first held by the Censors, to the last by *Appius Claudius*, the intervening sixty will each of them contain about six years and an half.

This is the real state of the case, as it is deduced from the most authentic records: from which we see, that tho' time and custom have fixed the notion

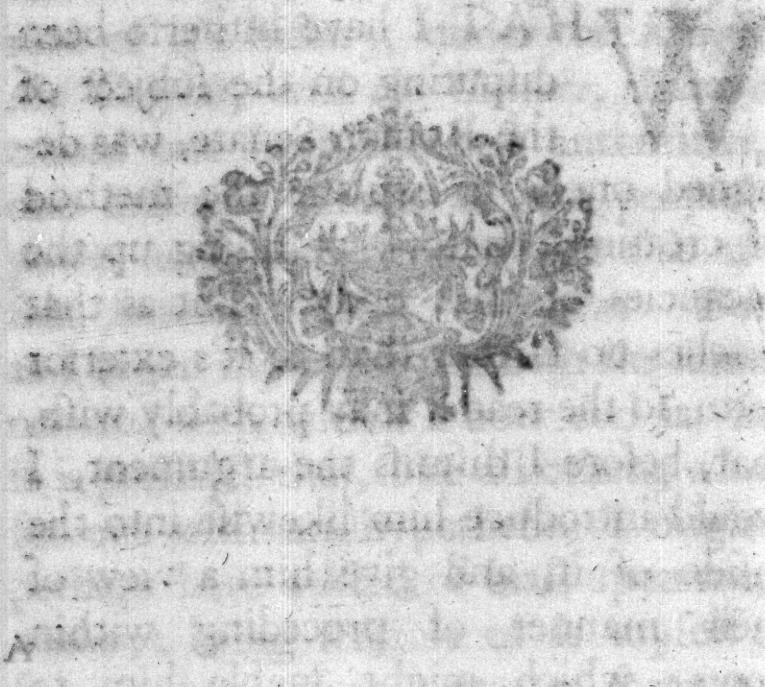
of a Quinquennium or term of five years, to the word, Lustrum, yet there is no sufficient ground for it in fact or the nature of the thing.

I have now drawn out every thing, which I took to have any relation to my subject, or to be of any use towards illustrating the genuin state of the Roman Senate, from it's first institution, to the oppression of it's liberty: and am persuaded, if I do not flatter my self too much, that through every period of it's history, under the *Kings*, *the Consuls*, and *the Censors*, I have traced out from the best authorities, one uniform scheme of the people's power and absolute right over this affair, from one end to the other. But as I began my argument with the same notion, with which I now end it, so it is possible, that, like all others, who set out with an hypothesis, I might perhaps have a kind of bias upon me, without being sensible of it myself; so as to have given a greater force to some

some facts, than they will easily bear, in order to draw them to my particular sense. If this be the case, as I am sure, that it will not escape your Lordship's observation, so I shall have a pleasure to be corrected by your less biased judgment; since in this, as well as in all my other inquiries, truth is the onely fruit that I seek, or desire to reap from my labor.



the ROMANISTS
have large lips they will easily posse
to draw them to the beaten
path. If this be the case we I
am sure will not escape from
perdition's opposite bank
a blessing to us all will be
sent by intercession; since in
this case, nothing can be
done to hinder it. I hope
to let you in
so



A

T R E A T I S E

O N T H E

R O M A N S E N A T E.

P A R T t h e S E C O N D.

WHAT I have hitherto been disputing on the subject of the Roman Senate, was designed onely, to explane the method of creating Senators, or filling up the vacancies of that body. But as that reaches no farther than to it's exterior form, so the reader may probably wish, that, before I dismiss the argument, I would introduce him likewise into the inside of it, and give him a view of their manner of proceeding within doors; which might inable him to

I form

form a more adæquate idea of an assembly of men, which was unquestionably the noblest, and most august, that the world has ever seen, or ever will see ; till another empire arise, as widely extended, and as wisely constituted, as that of *Old Rome*. For this purpose, I have drawn out into this second part, and distributed under proper heads, whatever I had collected on that subject from my own observation ; which I have taken care to support and inlarge every where, as there was occasion, from the more copious collections of *P. Manutius* and *C. Siginius*, who, of all the moderns, seem to have had the most exact, as well as the most extensive knowledge of the affairs of ancient *Rome*. I have not however been a mere compiler, or translator of the works of those learned men, but while I make a free use of them, have taken a liberty, to which every one has a right, who draws from the same original authorities, of differ-

ng from them in several points, about the force and application of those authorities. But before I enter into a description of the forms and methods of proceeding in the Roman Senate, I think it necessary in the first place, to give a summary account of their power and jurisdiction, in order to shew, what a share they really had in the administration of the government, and on what important affairs their deliberations were employed.

S E C T. I.

Of the power and jurisdiction of the Roman Senate.

I HAVE already shewn, how by the original constitution of the government, even under the Kings, the collective body of the people was the real sovereign of *Rome*, and the dernier resort in all cases. But their power, though supreme and final, was

yet qualified by this check, that they could not regularly enact any thing, which had not been previously considered, and approved by the Senate [a]. This was the foundation of the Senatorian power, as we find it set forth, in one of their first decrees, concerning the choice of a King, where it is declared, that an election made by the people should be valid; provided, that it was made with the authority of the Senate [b]: and not only in this case, but in all others, the same rule was observed for many ages; and when

[a] Δύνασθε δὲ ἀν χάριτοι τότο μαρτυρεῖν, ὅτι ἐξ ὑπότιμος την πόλιν ἔκλισαν υμῶν οἱ πρόγονοι τότο τὸ γέρας ἔχοσσα ή βυλὴ διατείλεχεν, καὶ όθεν πώποτε οἱ δῆμοις ὅτι μὴ προβυλέυσειεν η βυλὴ, οὔτε ἐπέκρινεν, οὔτε ἐπεψήφισεν, οὐχ ὅτι νῦν, αλλ' ἐδειπέτι τῷ βασιλέων. Dionys. Hal. l. 7. 38. Edit. Oxon.

[b] Patres-decreverunt, ut cum populus regem jussisset, id sic ratum esset, si Patres auctores fierent. &c. Liv. 1. 17.

Numam Pompilium—populi jussu, Patribus aucto-ribus Romæ regnasse. Id. 4. 3.

Inde Tullum Hostilium—Regem populus jussit, Patres auctores facti. Id. 1. 22. Tum enim non gerebat is magistratum, qui ceperat, si Patres auctores non erant facti. Cic. pr. Plancio 3.

one of the Tribuns, in contempt of it, ventured to propound a law to the people, on which the Senate had not first been consulted, all his Collegues interposed and declared, that *they would not suffer any thing to be offered to the suffrage of the citizens, till the fathers had passed a judgment upon it [c]*. And this indeed continued to be the general way of proceeding in all quiet and regular times, from the beginning of the Republic to the end of it: and the constant stile of the old writers, in their accounts of the public transactions is, that the Senate *voted or decreed*, and the people *commanded* such and such an act [d].

Since nothing therefore, which related to the government, could be

[c] Per intercessionem Collegarum, qui nullum Plebiscitum, nisi ex auctoritate Senatus, se perferriri passuros ostenderunt, discussum est. Id. 4. 49.

[d] Senatus eam pacem servandam censuit, & paucos post dies, populus jussit. Id. 37. 55.

Ex auctoritate Patrum, jussu populi, bellum Fa-
liscis indictum est. Id. x. 45.

brought before the people, till it had been examined by the Senate, so on many occasions, where hast perhaps or secrecy was required, and where the determinations of the Senate were so just and equitable, that the consent of the people might be presumed and taken for granted, the Senate would naturally omit the trouble, of calling them from their private affairs, to an unnecessary attendance on the public; till by repeated omissions of this kind, begun at first in trivial matters, and proceeding insensibly to more serious, they acquired a special jurisdiction and cognizance in many points of great importance, to the exclusion even of the people; who yet, by the laws and constitution of the government, had the absolute dominion over all. For example;

1. They assumed to themselves the guardianship and superintendence of the public religion; so that no new God could be introduced, nor Altar erected,

erected, nor the Sibylline books consulted, without their express order [e].

2. They held it as their prerogative, to settle the number and condition of the foreign provinces, that were annually assigned to the magistrates, and to declare, which of them should be Consular and which Praetorian provinces [f].

3. They had the distribution of the public treasure, and all the expences of the government; the appointment of stipends to their generals, with the

[e] Ex auctoritate Senatus latum ad populum est, ne quis Templum aramve injussu Senatus aut Tribunorum pl. majoris partis dedicaret. Liv. 9. 46.

Vetus erat decretum, ne qui Deus ab Imperatore consecraretur, nisi a Senatu probatus. ut M. Æmilius de suo Alburno. Tertull. Apol. 5.

Quamobrem Sibyllam quidem sepositam habemus, ut injussu Senatus ne legantur quidem libri. Cic. de Div. 54.

Quoties Senatus Decemviros ad libros ire jussit? ib. I. 48.

[f] Tu Provincias Consulares—quas C. Gracchus non modo non abstulit ab Senatu, sed etiam ut necesse esset, quotannis constitui per Senatum, lege sanxit. Cic. pr. Dom. 9. Vid. in Vatin. 15.

number of their lieutenants and their troops, and of the provisions and cloathing of their armies [g].

4. They nominated all embassadors sent from *Rome*, out of their own body, and received and dismissed all, who came from foreign states, with such answers as they thought proper [h].

5. They had the right of decreeing all supplications or public thanksgivings, for victories obtained, and of conferring the honor of an ovation or triumph, with the title of Emperor on their victorious generals [i].

6. It

[g] Καὶ μὴν ἡ σύγκλητος πρωτου μὲν ἔχει τὸν τὸ ταμείον κυρίαν, καὶ γὰρ τῆς ἐισόδου πάσης ἀυτῆς κρατεῖ, καὶ τῆς ἐξόδου παραπλησίως. Polyb. I. 6. 461.

*Aenei δὲ τὸ τῆς συγκλητοῦ βελήματος, ὅτε σῆτος, ὅτε ιμάτισμος, ὅτε δύφωνια δύναται χορηγεῖσθα τοῖς στρατοπέδοις, &c. id. 463. Senatus, in augustiis ærarii, Cæsaris exercitum stipendio affecit. Cic. pr. Balb. 27.

[h] Ne hoc quidem Senatus relinqueras, quod nemo unquam ademit, ut Legati ex ejus ordinis auctoritate legarentur—quis Legatos unquam audivit sine Senatus consulo? in Vatin. 15. Vid. Polyb. 461.

[i] Senatus in quatriuum, quod nullo ante bello supplicationes decernit. Liv. 5. 23. etenim cui vi-

ginti

6. It was their province, to inquire into public crimes or treasons either in *Rome* or the other parts of *Italy*; and to hear and determine all disputes among the allied and dependent cities [k].

7. They exercised a power, not only of interpreting the laws, but of absolving men from the obligation of them, and even of abrogating them [l].

8. In
ginti his annis supplicatio decreta est, ut non Imperator appellaretur? Cic. Phil. 14. 4, 5.

Τος γαρ προσαχορευομένος παρ' αὐτοῖς θειάμβες—τοῖς
κύνωντας χειρίζειν ως πρέπει, πολὺ δὲ τὸ παράπον ἐδὲ συνέλειν,
ἴαν μὴ τὸ συνέδριον συγκαλάθηται. Polyb. ibid.

[k] Όμοιώς καὶ σσα τῶν αἰδικημάτων τῶν κατ' Ἰταλίαν
προσδεῖται δημοσίαι επισκέψεως—τῇ συγκλήτῳ μέλει περὶ
τὰτων. Polyb. 461.

Consulem—res in Etruria tenuerunt, quæstiones
ex S. C^o, de conjurationibus principum habentem.
Liv. 30. 26. Q. Fabium Labeonem arbitrum No-
lanis & Neapolitanis de finibus agri a Senatu da-
tum. Cic. Off. 1. x.

[l] Senatus quidem, cuius est gravissimum judi-
cium de jure legum. [Cic. pr. Dom. 27.] Quatuor
omnino genera sunt, in quibus per Senatum, more
majorum, statuatur aliquid de legibus. unum est e-
jusmodi, placere legem ahrogari—Alterum, quæ lex
lata

8. In the case of civil dissensions or dangerous tumults within the city, they could arm the Consuls by a vote with absolute power, to destroy and put to death, without the formality of a trial, all such citizens, as were concerned in exciting them [m].

9. They had a power, to prorogue or postpone the assemblies of the people; to decree the title of King, to any Prince, whom they pleased; thanks and praise, to those, who had deserved them; pardon and reward, to enemies or the discoverers of any treason; to declare any one an enemy by a vote; and

lata esse dicatur, ea non videri populum teneri. pr. Cornel. 1. vid. Cic. pr. leg. Manil. 21. de Pompeio legibus ex Senatus consulto soluto. De Scipionibus legibus solutis. Val. Max. 8. 15. it. Cic. Phil. 5.

[m] *Senatus decrevit, darent operam Consules, nequid detrimenti Respub. caperet. ea potestas per Senatum, more majorum, Magistratui maxima permittitur: exercitum parare, bellum gerere, coercere omnibus modis socios atque cives: domi militieque imperium judiciumque summum habere: aliter fine populi jussu nulli earum rerum Consuli jus est.* Sallust. de Bell. Catilin. 29. Cic. in Cat. 1. xi.

and to prescribe a general change of habit to the city, in cases of any imminent danger or calamity [n].

These were the principal articles, in which the Senate had constantly exercised a peculiar jurisdiction, exclusive of the people; not grounded on any express law, but the custom only and practice of their ancestors, derived to them from the earliest ages. And as this was found by long experience, to be the most usefull way of administering the public affairs, and the most conducive to the general peace and prosperity of the city, so it was suffered by the tacit consent of the

[n] Comitia dilata ex Senatus consulto. [Cic. Ep. ad Att. 4. 16.] Meministis fieri S. C. me referente, ne postero die Comitia haberentur. [Cic. pr. Mur. 25.]

Is Rex [Deiotarus] quem Senatus hoc nomine saepe appellavisset. [pr. Deiot. 3.]

De Masinissa Rege appellato. Vid. Liv. 30. 17.
De praemissis indicibus decretis.

Vid. Sallust. Bell. Cat. 30. Cic. in Cat. 4. 3. 34. 4.
De Dolabella hoste judicato. Phil. xi. 12.

De Lepido, Ep. Fam. 12. x. Senatus frequens vestem pro mea salute mutandam censuit. pr. Sext. 12.

people;

people, to continue in the hands of the Senate, as a matter of convenience, rather than of right, and connived at, rather than granted, for the sake of the common good [o].

But whenever any bold Tribun, or factious magistrate, not content with the honors of the city in the usual forms, nor with such, as the Senate was disposed to confer upon him, chose to apply to the people for some extraordinary grant of them, the citizens were frequently induced, by the artifices of such leaders, to seize into their own hands several branches of that jurisdiction, which I have been describing, and which had always been administered before by the Senate. And after this method was once introduced and found to be effectual, it became by degrees the common recourse of all, who, for the advancement of their pri-

[o] Cui populus ipse moderandi & regendi sui potestatem, quasi quasdam habens, tradidisset. Cic. de Orat. i. 52.

vate ambition, affected the character of popularity ; and was pushed so far at last, as to deprive the Senate in effect of all it's power and influence in the state.

For in the first place, the Tribuns soon snatched from them that original right, which they had enjoyed from the very foundation of the city, of being the authors or first movers of every thing, which was to be enacted by the people ; and excluded them from any share or influence in the assemblies of their tribes [p] : and tho' in the other assemblies of the *Curiæ* and the *Centuries*, they seemed to have reserved to them their ancient right, yet it was reduced to a mere form, without any real force : for instead of being, what they had always been, the authors of each particular act, that was to be proposed

[p] Vid. Dionys. Hal. l. 41, 49.

Quod Patres apud majores nostros non tenere potuerunt, ut reprehensores essent comitiorum. Cic. pr. Planc. 3.

to the people's deliberation, they were obliged by a special law, to authorise every assembly of the people, and whatever should be determined in it, even before the people had proceeded to any vote [q]: and *C. Gracchus* afterwards, in his famous Tribune, used to boast, that he had demolished the Senate at once, by transferring to the Equestrian order, the right of judicature in all criminal causes, which the Senate had possessed from the time of the Kings [r].

But no man ever insulted their authority more openly, or reduced it so low, as *J. Cæsar*: who instead of expecting from the Senate, as the practice had always been, the assignment of a

[q] Q. Publilii Philonis Dictatura popularis, quod tres leges secundissimas plebi, ad versas nobilitati tulit. unam, ut plebiscita omnes Quirites tenerent: alteram, ut legum, quæ Comitiis Centuriatis ferrentur, ante initium suffragium Patres auctores fierent. *Liv. 8. 12.*

[r] Ὡς ἀθέως τὸν Βελλὸν καθηγεῖται. Appian. de Bell. Civ. l. i.

provincial

provincial government, at the expiration of his Consulship, applied himself directly to the people; and by the help of the Tribun, *Vatinius*, procured from them a law, by which the provinces of *Illyricum* and the *Cisalpine Gaul* were conferred upon him *for the term of five years*, with a large appointment of money and troops; which so shocked the Senate, and was thought so fatal to their authority, that lest it should become a precedent by being repeated, they thought fit, of their own accord, to add to the two provinces already granted to him, the government also of the *Transalpine Gaul*, which he was understood still to desire, that they might prevent him from making a second application to the people [s]. It was in these days of faction and vio-

[s] Et initio quidem Galliam Cisalpinam, Illyrico adjecto, lege Vatinia accepit: mox per Senatum, Comatam quoque; veritis Patribus, ne si ipsi negassent, populus & hanc daret. Suet. J. Cæs. c. 22. Plutar. p. 714.

lence,

lence, promoted chiefly by *Cæsar*, in the first Triumvirate, that a profligate Consul, *Gabinius*, in a public speech to the people, had the insolence to declare, *that men were mistaken, if they imagined, that the Senate had then any share of power or influence in the Republic* [t]. But in all these insults on the authority of the Senate, though the honest of all ranks loudly inveighed against them, and detested the authors of them, as men of dangerous views, who aspired to powers, that threatened the liberty of the city ; yet none ever pretended to say, that the acts themselves were illegal ; or that the people had not a clear right, by the very constitution of the Republic, to command and enact whatever they judged expedient.

[t] *Habet talem orationem Consul, qualem nunquam Catilina victor habuisset ; errare homines, si etiam tum Senatum aliquid in Repub. posse arbitrantur.* Cic. pr. Sext. 12.

S E C T.

S E C T. II.

*Of the right and manner of summoning
or calling the Senate together.*

THE right of convoking the Senate on all occasions, belonged of course to the Consuls, as the supreme magistrates of the city [v]: which in their absence devolved regularly to the nexte magistrates in dignity, the Praetors, and the Tribuns [x]. But these last, as I have elsewhere observed, by virtue of their office, clam-

[v] What is here said, of the proper right of the Consuls to summon the Senate, must be understood likewise of all those other magistrates, who were created on extraordinary occasions with supreme power, in the place or absence of the Consuls: as, the *Dictator*, *Military Tribuns*, *Decemviri*, *Interrex*, *Praefect of the city*. Vid. A. Gell. 14. 7.

[x] Placuit nobis, ut statim ad Cornutum, Praetorem urb. litteras deferremus; qui, quod Consules aberant, Consulare munus sustinebat, more majorum. Senatus est continuo convocatus.—Cic. Ep. Fam.

x. 12.

K

ed

ed and exercised a power of summoning the Senate at any time, whenever the affairs of the people required it, though the Consuls themselves were in the city [y]. Yet, out of deference to the Consular authority, the Senate was but rarely called, when they were abroad, unless in cases of sudden emergency, which required some present resolution [z].

In the early ages of the Republic, when the precincts of the city were small, the Senators were personally summoned by an Apparitor [a]: and sometimes by a public Crier, when their affairs required an immediate dis-

[y] Οἱ δὲ τότε δῆμαρχοι πρῶτοι συγκαλεῖν ἐπεβαίλοντο τὴν βελήν. Dionys. x. 31.

Cum Tribuni pl. edixissent, Senatus adesset. a. d. xiii. Kal. Jan. Cic. Ep. Fam. xi. 6. it. x. 28.

[z] Senatus saepius pro tua dignitate appellaretur, si absentibus Consilibus unquam, nisi ad rem novam cogeretur. Cic. ibid. 12. 28. Liv. 30. 23.

[a] A Villa in Senatum arcessebant & Curius & ceteri Senes: ex quo, qui eos arcessebant, viatores nominati sunt. Cic. de Sen. 16.

patch [b]. But the usual way of calling them in later days, was by an edict, appointing the time and place, and published several days before, that the notice might be more public [c]. These edicts were commonly understood to reach no farther than to those, who were resident in *Rome*, or near it; yet when any extraordinary affair was in agitation, they seem to have been published also in the other cities of *Italy* [d]. If any Senator refused or neglected to obey this summons, the Consul could oblige him to give surety, for the payment of a certain fine, if the reasons of his absence

[b] Postquam audita vox in Foro præconis, Patres in Curiam ad Decemviro vocantis, &c. Liv. 3. 38. Ὁπίμιος τὴν βελὴν διὰ κηρύκων συνεχάλει. App. Bell. Civ. 1.

[c] Cum tot edicta proposuisset Antonius, (Consul) edixit, ut adesset Senatus frequens a. d. viii. Kal. Dec.—in ante diem. iv. Kal. distulit. Cic. Phil. 3. 8.

[d] Senatum etiam Kalendis velle se frequentem adesse, etiam Formiis proscribi jussit. Cic. de J. Cæsare, ad Att. 9. 17.

should not be allowed [e]. But from sixty years of age, they were not liable to that penalty, nor obliged to any attendance, but what was voluntary [f]. In ancient times, as *Valerius* writes, "the Senators were so vigilant and attentive to the care of the public, that, without waiting for an edict, they used to meet constantly of themselves, in a certain portico, adjoining to the Senate house, whence they could presently be called into it, as soon as the Consul came; esteeming it scarce worthy of praise, to perform their duty to

[e] Postquam citati non conveniebant, dimissi circa domos Apparitores ad pignora capienda. Liv. 3. 38. Quis unquam tanto damno Senatorem coegerit? aut quid est ultra, praeter pignus & multam? Cic. Phil. I. 5.

[f] Lex a sexagesimo anno Senatorem non citat. Senec. de Brev. vit. 20. But *Seneca* the father tells us, that their absence was excused onely from the *sixty fifth year* of their age, which seems most probable. Controv. Ult. I. 1. Senator post annum sexagesimum quintum in Curiam venire nec cogitur nec vetatur.

"their.

bluond

"their country, by command only,
"and not of their own accord [g]."

S E C T. III.

*Of the place in which the Senate used
to meet.*

THE Senate could not regularly be assembled in any private or profane place; but always in one set apart, and *solemnly consecrated to that use, by the rites of augury [b]*. There were several of these in different parts of the city, which are mentioned occasionally by the old writers, as places, in which the Senate usually met; as they happened to be appointed by different Consuls, agreeably either to their own particular convenience, or

[g] Val. Max. 1. 2. 2. 6.

[b] Docuit confirmavitque (Varro) nisi in loco per Augures constituto, quod Templum appellatur, Senatus consultum factum esset, justum id non fuisse. A. Gell. 14. 7.

to that of the Senate in general, or to the nature of the business, which was to be transacted. These Senate houses were called *Curiæ*, as the *Curia Calabra*, said to be built by *Romulus*; the *Curia Hostilia*, by *Tullus Hostilius*; and the *Curia Pompeia*, by *Pompey the Great* [i].

But the meetings of the Senate were more commonly held in certain temples, dedicated to particular Deities; as in that of *Jupiter*, *Apollo*, *Mars*, *Vulcan*, *Castor*, *Bellona*; of *Concord*, *Faith*, *Virtue*, *the Earth*, &c. For we find all these particularly celebrated by the ancients, as places, where the Senate was frequently assembled: all which had Altars and Images erected in them, for the peculiar worship of those Deities, whose names they bore:

[i] Juxta Curiam Calabram, quæ Casæ Romuli proxima est. Macr. Sat. 1. 15.

Quod cum Senatus de his rebus in Curia Hostilia haberetur. Liv. 5. 55.

Postquam Senatus Idib. Mart. in Curiam Pompeii edictus est. Suet. J. Cæs. 80.

yet

yet these Temples, on account of the use, which the Senate made of them, were called likewise *Curiæ*; as well as the proper *Curiæ*, or Senate houses, on account of their solemn dedication, are frequently called *Temples* [k]: For the word Temple, in it's primary sense, signified nothing more, than a place set apart, and consecrated by the Augurs; whether inclosed or open; in the city, or in the fields. Agreeably to which notion, the Senate used to meet on some occasions in the open air; and especially whenever a report was made to them in form, that *an ox had spoken*; which prodigy, as *Pli-*

[k] Propterea & in Curia Hostilia & Pompeia—
quum profana ea loca fuissent, templa esse per Augures constituta, ut in iis Senatus consulta, more majorum, justa fieri possent. A. Gell. 14. 7.

Qui—Curiam incenderit?—Templum sanctitatis, amplitudinis, mentis, consilii publici—[Cic. pr. Mil. 33.] Cum Senatus in Curiam, hoc est, Ædem Concordiae, Templumque inauguratum convenisset. Lamprid. Alex. Sev. c. 6.

my tells us, was common in the earlier ages [1].

The view of the government, in appropriating these Temples to the use of the Senate, was, to imprint the more strongly on the minds of it's members, the obligation of acting justly and religiously, from the sanctity of the place, and the presence, as it were, of their Gods. Thus one of the Censors removed the statue of Concord, from a part of the city, in which it was first erected, into the Senate house, which he dedicated to that Goddess; imagining, as Cicero tells us, *that he should banish all love of dissension, from that seat and temple of the public council, which he had devoted by that means*

[1] In hoc tumultu Flaccus inter Aequilinam Collinamque portam posuit castra. Consules Senatoriusque in castra venerunt. Liv. 26. 10.

Est frequens in prodigiis prisorum, bovem locutum: quo nuntiato, Senatum sub diyo haberi solitum. Plin. Hist. N. 8. 45.

to the religion of Concord [m]. The case was the same with the Temples of the other Goddesses, in which the Senate often met; of *Bellona, Faith, Virtue, Honor*; that the very place might admonish them, of the reverence due to those particular virtues, which their ancestors had deified for the sake of their excellence: and it was to strengthen this principle and sense of religion in them, that *Augustus* afterwards enjoined, that every Senator, before he sat down in his place, should supplicate that God, in whose Temple they were assembled, with incense and wine [n].

The Senate, on two special occasions, was always held without the gates of Rome, either in the Temple of *Bellona*,

[m] Præscribere enim se arbitrabatur, ut sine studiis diffensionis sententiæ dicerentur, si sedem ipsam ac Templum publici consilii religione Concordiæ devinxisset. Cit. pr. Dom. 51.

[n] Quo autem lecti probatique & religiosius & minore molestia, Senatoria munera fungerentur, sicut, ut prius, quam consideret quisque, thure ac merlo supplicaret apud aram ejus Dei, in cuius Templo coiretur. Suet. Aug. c. 35.

or

or of *Apollo*. 1st, For the reception of foreign ambassadors; and especially of those, who came from enemies, who were not permitted to enter the city. 2dly, To give audience and transact business with their own generals, who were never allowed to come within the walls, as long as their commission subsisted, and they had the actual command of an army [o].

S E C T. IV.

Of the time when the Senate might legally be assembled.

PAULLUS MANUTIUS is of opinion, that there were certain days, on which the Senate might regu-

[o] Legati Nabidis Tyranni Romam venerunt duo. his extra Urbem, in Æde Apollinis Senatus datus est. Liv. 34. 43.

Legati ab Rege Perseo venerunt. eos in oppidum intromitti non placuit, quum jam bellum Regi eorum—Senatus decreset, & populus jussisset—in Ædem

regularly be assembled, and others, on which it could not: and that these last were called *Comitiae* days, and marked under that name in the Kalendars, as days wholly destined and set apart by law, for the assemblies of the people [p]. But *Sigonius* contends, that the Senate might meet on any of those days, unless when the people were actually assembled, and transacting business on them: in proof of which, he brings several testimonies from the old writers, wherein the Senate is said to have been held, not only on those days, which are marked in the *Fasti*, as *Comitiae*; but on those also, on which the people had been actually

dem Bellonæ in Senatum introducti. Id. 42. 36.

P. Corn. Scipio Consul—postero die quam venit Romam, Senatu in Ædem Bellonæ vocato, quum de rebus a se gestis differuisset, postulavit, ut sibi triumphanti liceret in urbem invehiri. Id. 36. 39.

Qui ne triumphaturi quidem intrare Urbem in-jussu Senatus deberetis: quibusque exercitum victo-rem reducentibus curia extra muros præberetur. Se-nec. de Benef. 5. 15.

[p] De Senatu Romano. c. 5.

assem-

assembled, but after their assemblies were dismissed. He observes likewise, that the number of *Comitiae* days, as they are marked in the Kalendars, amount in all to two hundred: which makes it scarce credible, that either the affairs of the people should necessarily employ so many days, or that the Senate should be precluded from the use of so many in each year: from all which he infers, that the title of *Comitiae* denoted such days onely, on which the people might be legally assembled; not such, on which they were of course to be assembled [q].

The truth of the matter seems to be this, that though the days called *Comitiae* were regularly destined to the assemblies of the people; yet the Senate also might not onely be convened on the same, after the popular assemblies were dissolved, but had the pow-

[q] Vid. Joh. Sarium Zamosc. de Senatu Rom. l. 2. 7. quem librum Car. Sigonius sub nomine discipuli sui scripfit.

er likewise; whenever they found it expedient, to supersede and postpone the assemblies of the people to another day; and by a particular decree, to authorise their own meetings upon them, for the dispatch of some important affair therein specified [r].

The Senate met always of course on the first of January, for the inauguration of the new Consuls, who entered into their office on that day; and there are instances in the ancient writers, of its being assembled on every other day, except one or two, till after the 15th of the same month; the latter part of which was probably assigned to the assemblies of the peo-

[r] *Senatus deinde, concilio plebis dimisso, haberi cœptus.* Liv. 38. 53: 39. 39.

M. Marcellus Consul—de ea re ita censuit, uti Consules de iis ad Senatum referrent—utique ejus rei causa per dies Comitiales Senatum haberent, Senatusque consultum facerent. Cic. Ep. Fam. 8. 8.

Meminitis fieri Senatus consultum, referente mente postero die Comitia haberentur, ut de his rebus in Senatu agere possemus. Cic. pr. Mur. 25.

ple.

ple [s]. The month of *February*, generally speaking, was reserved intire by old custom to the Senate, for the particular purpose of giving audience to foreign ambassadors [t]. But in all months universally, there were three days, which seem to have been more especially destined to the Senate, *the Kalends, Nones, and Ides*, from the frequent examples found in history, of it's being convened on those days. But *Augustus* afterwards enacted, that the Senate should not meet regularly or of course, except on *two days* onely in each month, *the Kalends and Ides* [v]. The Senate was seldom or never held on public festivals, which were dedicated to shews and sports. In the

[s] Vid. Paull. Manut. ibid.

[t] A Kalendis Feb. Legationes in Idus Feb. re-
jiciebantur. Cic. ad Frat. 2. 3.

Hic est mensis, quo Senatus frequens postulatis
provinciarum, & legationibus audiendis datur. Af-
con. in Verr. 1. 35. Ep. ad Fra. 2. 12.

[v] Ne plus quam bis in mense legitimus Sena-
tus ageretur, Kalendis & Idibus. Suet. Aug. 35.

month

month of *December*, in which the *Saturnalia* were celebrated for several days successively, *Cicero* giving an account of the debates of the Senate, when two hundred members were present, calls it *a fuller meeting than he thought it possible to have been, when the holy days were commencing* [x].

On their days of meeting, they could not enter upon any business *before the Sun was risen*; nor finish any, *after it was set*. Every thing transacted by them, either before or after that time, was null and void, and the author of it liable to censure [y]: whence it became a standing rule, that nothing new should be moved, *after four a clock in the af-*

[x] *Senatus fuit frequentior, quam putabamus esse posse, mense Decembri sub dies festos—fane frequentes fuimus; omnino ad ducentos.* Cic. Ep. ad Fr. 2. 1.

[y] *Post hæc deinceps dicit, (Varro) Senatus consultum, ante exortum aut post occasum solem factum, ratum non fuisse. Opus etiam Censorium fecisse existimatos, per quos eo tempore S. C. factum esset.* A Gell. 14. 7.

ternoon.

ternoon [z]; Cicero therefore reflects on certain decrees, procured by Anthony, in his Consulship, as being made too late in the evening, to have any authority [a].

S E C T. V.

Of the different ranks and orders of men in the Senate, and of the method observed in their deliberations.

THE Senate, as I have shewn above, was composed of all the principal magistrates of the city, and

[z] *Majores nostri novam relationem post horam decimam in Senatu fieri vetabant. Senec. de Tranquillitat. 168. A.*

[a] *Præclara tamen Senatus consulta illo ipso die Vespertina. Cic. Phil. 3. x.*

There is one instance however of the Senate's being assembled at midnight. A. U. 290. upon the arrival of an express from one of the Consuls, to inform the Senate, that he was besieged by the superior forces of the *Æqui and Volsci*, and in danger of being destroyed, with his whole army, without an immediate succour; which was accordingly decreed and sent to him without loss of time. Dionys. 9. 63.

of all, who had born the same offices before them: and consisted therefore of several degrees and orders of men, who had each a different rank in it, according to the dignity of the character, which he sustained in the Republic.

At the head of it, sat the two Consuls in chairs of state [b]; raised, as we may imagine, by a few steps, above the level of the other benches: out of respect to whose supreme dignity, the whole assembly used to pay the compliment of *rising up* from their seats, as soon as they entered into the Senate house [c]. *Manutius* thinks, that the other magistrates sat next to the Consular chair, each according to his rank; the *Prætors*, *Cen-*

[b] Non hæc sedes honoris, sella curulis, unquam vacua mortis periculo fuit. Cic. in Cat.

4. I.

[c] Num quisquam tibi, [Consuli] in Curiam venienti assurrexit. in Pis. 12.

*A Treatise on
sors, Aediles, Tribuns, Questors [d].*

But that opinion is grounded onely on conjecture ; since none of the ancients

[d] Vid. Paul. Manut. de Senatu Rom. c. ix.

But since the manner of their sitting can be gathered onely from conjecture, I have been apt rather to think, that the Consular Senators, who, in all ages of the Republic, were the leaders and first speakers in the Senate, used to sit next in order to the Consuls : and after them the *Praetors*, and all who were of *Praetorian* dignity, or had been *Praetors* : then the *Aediles*, the *Tribuns*, and the *Questors*, on distinct benches ; and on the same bench with each, all who had born the same offices : but the Curule magistrates, as the *Praetors* and *Aediles*, were perhaps distinguished at the head of their several benches, by seats somewhat raised or separated at least from the rest in the form of our *Settees*, or of that *Longa Cathedra*, which *Juvenal* mentions, to denote their Curule dignity. Sat. 9. 52.

These Senatorian benches were long, so as to hold a great number on each : whence *Pompey* used to call the determinations of the Senate, *the judgement of the long bench*, [Cic. Ep. Fam. 3. 9.] by way of distinction from the shorter benches of the courts of judicature. Some of these benches however appear to have been very short, or not unlike to our stools ; on which each of the ten *Tribuns* perhaps used to sit single : for the Emperor *Claudius*, as *Suetonius* writes, when he had any great affair to propose to the Senate, used to sit upon a *Tribunitian* bench, placed between the *Curule chairs* of the two *Consuls*. Suet. Claud. 23.

have

have left us any account of their manner of sitting. This however is certain, that all the private Senators, sat on different benches, and in a different order of precedence, according to the dignity of the magistracies, which they had severally born. First the *Consulars*; then the *Prætorians*, *Ædilitians*, *Tribunitians*, and *Quæstorian*s: in which order, and by which titles, they are all enumerated by *Cicero* [e]: and as this was their order in sitting, so it was the same also, in delivering their opinions, when it came to their turn.

But besides these several orders, of which the Senate was composed, there was one member of it distinguished always from the rest, by the title of *Prince of the Senate*: which distinction had been kept up from the very beginning of the Republic; to preserve the shadow of that original form,

[e] Cic. Phil. 13. 13, 14.

established by their founder, *Romulus*; by which he reserved to himself the nomination of the first or principal Senator, who in the absence of the King, was to preside in that assembly. This title was given of course to that person, whose name was *called over the first* in the roll of the Senate, whenever it was renewed by the Censors. He was always one of Consular and Censorian dignity; and generally one of the most eminent for probity and wisdom: and the title itself was so highly respected, that he who bore it, was constantly called by it, preferably to that of any other dignity, with which he might happen to be invested [f]:

yet

[f] P. Lentulum, Principem Senatus. [Cic. Phil. 8. 4.] Cum armatus M. Æmilius, Princeps Senatus in Comitio stetisset. pr. Rabir. 7.

After the institution of the Censors, it became a custom to confer this title of *Prince of the Senate*, on the oldest Senator then living, of Censorian dignity: but in the second Punic war, when one of the Censors insisted, that this rule, delivered to them

by

yet there were no peculiar rights annexed to this title, nor any other advantage, except an accession of authority, from the notion, which it would naturally imprint, of a superior merit in those, who bore it.

The Senate being assembled, the Consuls, or the magistrate, by whose authority they were summoned, having first taken the auspices, and performed the usual office of religion, by sacrifice and prayer, used to open to them the reasons of their being called together, and propose the subject of that day's deliberation: in which all things divine, or relating to the worship of the Gods, were dispatched pre-

by their ancestors, ought to be observed, by which *T. Manlius Torquatus* was to be called over the first of the Senate; the other Censor declared, that since the Gods had given to him the particular lot of calling over the Senate, he would follow his own will in it, and call *Q. Fabius Maximus* the first; who by the judgement of *Hannibal* himself, was allowed to be the *Prince of the Roman people.* Liv. 27. xi.

ferably to any other busines [g]. When the Consul had moved any point, with intent to have it debated and carried into a decree, and had spoken upon it himself, as long as he thought proper, he proceeded to ask the opinions of the other Senators severally by name, and in their proper order; beginning always with the Consulars, and going on to the Praetorians, &c. It was the practice originally, *to ask the Prince of the Senate the first*: but that was soon laid aside, and the compliment transferred to any other ancient Consular, distinguished by his integrity and superior abilities: till in the later ages of the Republic, it became an established custom, to pay that respect to relations, or particular friends, or to those, who were likely to give an opinion the most fa-

[g] Docet deinde, (Varro) immolare hostiam prius, auspicarique debere, qui Senatum habiturus esset: de rebus divinis prius quam humanis ad Senatum referendum esse. A. Gell. 14. 7.

vorabile

vorable to their own views and sentiments on the quæstion proposed [b]. But whatever order the Consuls observed, in asking opinions, on the first of *January*, when they entered into their office, they generally pursued the same through the rest of the year. *J. Cæsar* indeed broke through this rule: for though he had asked *Craffus* the first, from the beginning of his Consulship, yet upon the marriage of his daughter with *Pompey*, he gave that priority to his Son-in-law; for which however he made an apology to the Senate [i].

L 4 This

[b] Singulo sautem debere consuli gradatim, principique a Consulari gradu. ex quo gradu semper quidem antea primum rogari solitum, qui Princeps in Senatum lectus esset: tum novum morem institutum refert, per ambitionem gratiamque, ut is primus rogaretur, quem rogare vellet, qui haberet Senatum, dum is tamen ex gradu consulari esset. ibid.

[i] Ac post novam affinitatem, *Pompeium* primum rogare sententiam cœpit, (*J. Cæsar*) quum *Craffum* soleret: essetque consuetudo, ut quem ordinem interrogandi sententias Consul Kal. Jan. instituisset, eum toto anno conservaret. Suet. J. Cæs. 21.

Ejus

This honor, of being asked in an extraordinary manner, and preferably to all others of the same rank, though of superior age or nobility, seems to have been seldom carried farther, than to four or five distinguished persons of Consular dignity [k]; and the rest were afterwards asked according to their seniority: and this method, as I have said, was observed generally through the year, till the election of the future Consuls, which was commonly held about the month of *August*: from which time, it was the constant custom, to ask the opinions of the *Consuls elect* preferably to all

Ejus rei rationem reddidisse eum Senatui, Tiro
Tullius, M. Ciceronis libertus, refert. A. Gell.
4. x.

[k] Scito igitur, primum me non esse rogatum
sententiam: præpositumque esse nobis Pacificatorem
Allobrogum: idque admurmurante Senatu, neque
me invito, esse factum.—& ille secundus in dicendo
locus habet auctoritatem pœne principis. tertius est
Catulus: quartus (si etiam hoc quæris) Hortenfius.
Cic. ad Att. 1. 13.

C. Cæsar in Consulatu—quatuor solos extra ordi-
nem sententiam rogasse dicitur. A. Gell. 4. x.

others,

others, 'till they entered into their office, on the first of January following [1].

As the Senators then were personally called upon to deliver their opinions, according to their rank, so none were allowed to speak, till it came to their turn, excepting the magistrates; who seem to have had a right of speaking on all occasions, whenever they thought fit; and for that reason perhaps were not particularly asked or

[1] Tum D. Junius Silanus, primus sententiam rogatus, quod eo tempore Consul designatus erat. [Sallust. Bell. Cat. 50.] Ego tamen sic nihil expecto, quomodo Paullum, Consulem designatum, primum sententiam dicentem. Cic. Ep. Fam. 8. 4. Vid. it. Phil. 5. 13.

As the Consuls elect had this preference given in speaking before all the Consulars, so the Prætors and Tribuns elect, seem to have had the same, before the rest of their particular orders: for in that famous debate upon the manner of punishing *Catiline's* accomplices, we find that *J. Cæsar*, then *Prætor elect*, was asked his opinion by the Consul, at the head of the Prætorians; and *M. Cato*, then *Tribun elect*, was asked likewise in his turn, at the head of the Tribunitians. Vid. Sallust. Bell. Cat. 51, 52. Cic. Ep. ad Att. l. 12. 21. it Pigh. Annal.

called

called upon by the Consuls. Cicero indeed on a certain occasion, says, *that he was asked the first of all the private Senators [m]*; which implies, that some of the magistrates had been asked before him: but they were then asked by a *Tribun of the people*, by whom that meeting of the Senate had been summoned, and who would naturally give that preference to the superior magistrates, who then happened to be present: but I have never observed, that a Consul asked any one the first, but a Consular Senator, or the Consuls elect.

Tho' every Senator was obliged to declare his opinion, when he was asked by the Consul, yet he was not confined to the single point then under debate, but might launch out into any other subject whatsoever, and harangue

[m] Racilius surrexit, & de judiciis referre cœpit. Marcellinum quidem primum rogavit—postea de privatis me primum sententiam rogavit—Cic. ad Fra. 2. 1.

upon

upon it as long as he pleased [n]: And though he might deliver his opinion with all freedom, when it came to his turn, yet the Senate could not take any notice of it, nor enter into any debate upon it, unless it were espoused and proposed to them in form by some of the magistrates, who had the sole privilege of referring any question to a vote, or of dividing the house upon it [o]. Whenever any one spoke, he rose up from his seat, and stood

[n] *Licere Patribus, quoties jus sententiae dicendæ accepissent, quæ vellent expromere, relationemque in ea postulare.* Tacit. Ann. 13. 49.

Erat jus Senatori, ut sententiam rogatus, diceret ante quicquid vellet aliæ rei, & quoad vellet. A. Gell. 4. x.

[o] *Huic assentiuntur reliqui Consulares, præter Servilium— & Volcatium, qui, Lupo referente, Pompeio decernit.* Cic. Ep. Fam. 1. 1, 2.

From these two epistles it appears, that *Volcatius's* opinion in favor of *Pompey*, was not referred to the Senate by *Volcatius* himself, who was then a private Senator, but by *Lupus*, then Tribun of the people, in order to divide the house upon it. For a private Senator, as *Tacitus* intimates above, could only, *relationem postulare*, that is, demand to have it referred to a vote by some of the magistrates.

while

while he was speaking ; but when he assented onely to another's opinion, he continued sitting [p].

Several different motions might be made, and different quæstions be referred to the Senate by different magistrates, in the same meeting [q] : and if any businesse of importance was expected or desired, which the Consuls had omitted to propose, or were unwilling to bring into debate, it was usual for the Senate, by a sort of general clamor, to call upon them to move it ; and upon their refusall, the other magistrates had a right to propound it, even against their will [r].

If

[p] Racilius surrexit, &c. [Cic. ad Fra. 2. 1.] Postquam Cato assedit. [Sallust. Bell. Cat. 53. Cic. ad Att. 1. 14.] Quotiescumque aliquid est actum, sedens iis assensi, qui mihi lenissime sentire visi sunt. Cic. Ep. Fam. 5. 2.

[q] De Appia Via & de Moneta Consul ; de Lupercis Tribunus pleb. refert. Cic. Phil. 7 1.

[r] Conclamatum deinde ex omni parte Curiæ est, uti referret P. Ælius Prætor. [Liv. 30. 21.] Flagitare Senatus institit Cornutum, ut referret statim de tuis litteris. Ille, se considerare velle. cum ei

If any opinion, proposed to them, was thought too general, and to include several distinct articles, some of which might be approved, and others rejected, it was usual to require, that it might be divided, and sometimes by a general voice of the assembly, calling out, *divide, divide [s]*. Or if in the debate, several different opinions had been offered, and each supported by a number of Senators, the Consul, in the close of it, used to recite them all, that the Senate might pass a vote separately upon each: but in this, he gave what preference he thought fit, to that opinion which he most favored, and some-

ei magnum convicium fieret a cuncto Senatu, quinque Tribuni pl. retulerunt. [Cic. Ep. Fam. x. 16.] De quo legando spero Consules ad Senatum relatu-
ros; qui si dubitabunt, aut gravabuntur, ego me profiteor relaturum. Cic. pr. Leg. Man. 19.

[s] Quod fieri in Senatu solet, faciendum ego in Philosophia etiam existimo; cum censeat aliquis quod ex parte mihi placeat, jubeo dividere senten-
tiam. [Senec. Epist. 21.] Postulatum est, ut Bibuli sententia divideretur. Cic. Ep. Fam. I. 2. Vid. Af-
con. in Orat. pr. Mil. 6.

times

times even suppressed such of them, as he wholly disapproved [t]. In cases however, where there appeared to be no difficulty or opposition, decrees were sometimes made, without any opinion being asked or delivered upon them [v].

When any quæstion, was put to the vote, it was determined always by a division or separation of the opposite parties, to different parts of the Senate house; the Consul or presiding magistrate having first given order for it in this form; *let those, who are of such an opinion, pass over to that side; those, who think differently, to this [x].* What the majority of them approved, was

[t] Lentulus Consul, sententiam Calidii pronuntiaturum se omnino negavit. Cæs. Comm. Bell. Civ. 429.

[v] Praeclara tum oratio. M. Antonii—de qua ne sententias quidem diximus. Scriptum S. C. quod fieri vellet, attulit. Cic. Phil. 1. 1.

[x] Qui hoc censetis, illuc tranfite; qui alia omnia, in hanc partem. [Fest. in Voc. Qui.] de tribus Legatis, frequentes ierunt. in alia omnia. Cic. Ep. Fam. 1. 2.

drawn

drawn up into a decree, which was generally conceived in words prepared and dictated by the first mover of the question, or the principal speaker in favor of it; who, after he had spoken upon it, what he thought sufficient to recommend it to the Senate, used to conclude his speech, by summing up his opinion in the form of such a decree, as he desired to obtain in consequence of it [y]: which decree, when confirmed by the Senate, was always signed and attested by a number of Senators, who chose to attend through

[y] Thus Cicero's *Philippic* Orations, which were spoken at different times in the Senate, on points of the greatest importance, generally conclude with the form of such a decree, as he was recommending on each particular occasion; *Quæ cum ita sint*; or *Quas ob res, ita censeo.* Vid. Philip. 3, 5, 8, 9, x, 13, 14.

Cicero speaking of the decree, by which the accomplices of *Catiline* were condemned to suffer death, gives this reason why it was drawn in the name and words of *Cato*, tho' *Silanus*, the Consul elect, had delivered the same opinion before him; because *Cato* had spoken upon it more explicitly, fully, and strongly than *Silanus*. Ep. ad Att. 12. 21.

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the whole proces of it, for the sake of adding their names to it, as a testimony of their particular approbation of the thing, as well as of respect to the person, by whose authority, or in whose favor it was drawn [z].

When the Senate appeared to be disposed and ready to pass a decree, it was in the power of any one of the ten Tribuns of the people, *to intercede*, as it was called; that is, to quash it at once, by his bare negative, without assigning any reason [a]. The general law of these *intercessions* was, that any magistrate might inhibit the acts of his equal, or inferior [b]: but the
Tribuns

[z] Hæc enim Senatus consulta non ignoro ab amicissimis ejus, cujus de honore agitur, scribi solere. [Cic. Ep. Fam. 15. 6. it. 8. 8.] these subscriptions were called, S. C^{ui} auctoritates. ibid.

[a] Veto, was the solemn word used by the Tribuns, when they inhibited any decree of the Senate, or law proposed to the people. Faxo, ne juvet vox ista, Veto, qua nunc concinentes Collegas nostros tam læti auditis. Liv. 6. 37.

[b] Postea scripsit (Varro) de intercessionibus, dixitque intercedendi, ne Senatus consultum fieret,

jus

Tribuns had the sole prerogative, of controuling the acts of every other magistrate, yet could not be controuled themselves by any [c]. But in all cases, where the determinations of the Senate were overruled by the negative of a Tribun, of which there are numberless instances, if the Senate was unanimous, or generally inclined to the decree so inhibited, they usually passed a vote to the same purpose, and in the same words, which, instead of a decree, was called *an authority of the Senate*, and was entered into their journals [d], yet had no other force,

jus fuisse iis solis, qui eadem potestate, qua ii, qui S. C. facere vellent, majoreve essent. [A. Gell. 14. 7.] Ast ni potestas par majorve prohibesset, Senatus consulta perscripta servanto. Cic. de Leg. 3. 3.

[c] Οὐθεν γάρ τῶν πράγματοις ὑπὸ τῆς ἀρχῆς ἐκείνης ἐπισχέειν οὐ κωλυσαι τῶν ἄλλων τινὶ ἔξεστιν, ἀλλ' ἐπέρχεται μάρχη τότε οἰτι τὸ κράτος. Dionys. x. 31.

[d] De his rebus Senatus auctoritas gravissima intercessit: cui cum Cato & Caninius intercessissent, tamen est perscripta. [Cic. Ep. Fam. 1. 2.] Servilius Ahala—si quis intercedat Senatus consulto, se auctoritate fere contentum, dixit. Liv. 4. 57. Vid. Dio. 55. 550.

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than to testify the judgement of the Senate on that particular question, and to throw the odium of obstructing an usefull act, on the Tribun, who had hindered it. And in order to deter any magistrate, from acting so factiously and arbitrarily in affairs of importance, they often made it part of the decree, which they were going to enact, that if any one attempted to obstruct it, *he should be deemed to act against the interest of the Republic* [e]. Yet this clause had seldom any effect on the hardy Tribuns, who used to apply their negative in defiance of it; as freely, as on any other more indifferent occasion.

But the private Senators also, and especially the factious and leaders of parties, had several arts of obstructing

[e] *Senatum existimare, neminem eorum, qui potestatem habent intercedendi—moram afferre oportere, quominus S. C. fieri possit. qui impedierit—eum Senatum existimare, contra Rempub. fecisse. Si quis huic S. C^o intercesserit, Senatui placere, auctoritatem perscribi.* Cic. Ep. F. 8. 8. ad Att. 4. 2.

or postponing a decree, by many pretexts and impediments, which they could throw in it's way. Sometimes they alledged scruples of religion; that the *Auspices* were not favorable, or not rightly taken; which, if confirmed by the Augurs, put a stop to the busines for that day [f]. At other times, they urged some pretended admonition from the *Sibylline books*, which were then to be consulted and interpreted to a sense, that served their purpose [g]. But the most common

[f] Recitatis litteris, oblata religio *Cornuto* est.
Pulliorum admonitu, non satis diligenter eum auspicis operam dedisse; idque a nostro Collegio esse comprobatum. itaque res dilata est in posterum.
Ep. Fam. x. 12.

[g] Thus in a debate on the subject of replacing King *Ptolemy* on the throne of *Ægypt*; the Tribun *Cato*, who opposed it, produced some verses from the *Sibylline books*, by which they were warned, never to restore any King of *Ægypt* with an army; upon which the Senate laid hold on that pretext, and voted it dangerous to the Republic, to send the King home with an army. [Dio. 39. p. 98. Cic. ad Fra. 2. 2.] concerning which *Cicero*, in his account of it to *Lentulus*, says, Senatus religionis calumniam non religione, sed malevolentia, & illius regiae larcitionis invidia comprobat. Cic. Ep. Fam. i. 1.

method was, *to wast the day*, by speaking for two or three hours successively, so as to leave no time to finish the affair in that meeting; of which we find many examples in the old writers: yet when some of the more turbulent magistrates were grossly abusing this right, against the general inclination of the assembly, the Senators were sometimes so impatient, as to silence them, as it were, by force, and to disturb them in such a manner, by their clamor and hissing, as to oblige them to desist [b].

It seems probable, that a certain number of Senators was required by law, as necessary to legitimate any act, and give force to a decree. For it was

[b] C. Cæsar Consul M. Catonem sententiam rogavit. Cato rem, quam consulebatur, quoniam non e Repub. videbatur, perfici solebat. ejus rei gratia ducendæ, longa oratione utebatur, eximebatque dicens diem. A. Gell. 4. x.

Cum ad Clodium ventum est, cupiit diem consumere: neque ei finis est factus: sed tamen cum horas tres fere dixisset, odio & strepitu Senatus, coactus est aliquando perorare. Cic. ad Att. 4. 2.

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objected sometimes to the Consuls, that they had procured decrees *surreptitiously, and by stealth as it were, from an house not sufficiently full* [i]: and we find business also postponed by the Senate, for the want of *a competent number* [k]: so that when any Senator, in a thin house, had a mind to put a stop to their proceedings, he used to call out to the Consul, *to number the Senate* [l]. Yet there is no certain number specified by any of the old writers, except in one or two particular cases. For example; when the *Bacchanalian rites* were prohibited in

[i] Neque his contentus Consul fuit. Sed postea per infrequentiam furtim Senatus consulto adjecit &c. [Liv. 38. 44.] Qui per infrequentiam furtim Senatus consultum ad ærarium detulit. Liv. 39. 4.

[k] In Kalendas rejecta re, ne frequentiam quidem efficere potuerunt. Cic. Ep. Fam. 8. 3. it. 8. 5.

[l] *Numera Senatum*, ait quivis Senator Consuli, cum impedimento vult esse, quo minus faciat S. C. Fest. in Voc. Numera.

Renuntiatum nobis erat, *Hirrum* diutius dictuum, prendimus eum, non modo non fecit, sed cum de hostibus ageretur, & posset rem impedire, si, *ut numeraretur*, postularet, tacuit. Cic. Ep. Fam. 8. xi.

Rome, it was decreed, that no one should be permitted to use them, without a special licence granted for that purpose by the Senate, when *an hundred members were present* [m]: and this perhaps was the proper number required at that time in all cases, when the Senate consisted of *three hundred*. But about a century after, when its number was increased to *five hundred*, *C. Cornelius*, a Tribun of the people, procured a law, that the Senate should not have a power of *absolving any one from the obligation of the laws*, unless *two hundred Senators were present* [n].

The decrees of the Senate were usually published, and openly read to the people, soon after they were pass-

[m] Quum in Senatu centum non minus adessent.
Liv. 39. 18.

[n] Diximus—Cornelium primo legem promulgassem, ne quis per Senatum lege solveretur: deinde tulisse, ut tum denique de ea re S. C. fieret, cum adessent in Senatu non minus C. C.

Ascon. in Orat. pr. Cornel. i.

ed; and an authentic copy of them was always deposited in the public treasury of the city, or otherwise they were not considered as legal or valid [o]. When the business of the day was finished, the Consul, or other magistrate, by whom the Senate had been called together, used to dismiss them with these words, *Fathers, I have no farther occasion to detain you; or, no body detains you* [p].

S E C T. VI.

Of the force or effect of the decrees of the Senate.

AS to the force of these decrees, it is difficult to define precisely,

[o] *Senatus consulta nunquam facta ad ærarium (ab Antonio) referebantur.* [Cic. Phil. 5. 4.] Igitur factum S. C. ne decreta Patrum ante diem decimum ad ærarium deferrentur. Tacit. Ann. 3. 51.

[p] *Neque unquam recessit de Curia, nisi Consul dixisset, nihil vos moramur, Patres conscripti.* [Capitolin. de M. Aurel.] Tum ille, se Senatum negavit tenere. Cic. ad Fra. 2. 1.

what it was. It is certain, that they were not considered as laws, but seem to have been designed originally, as the ground work or preparatory step to a law, with a sort of provisional force, till a law of the same tenor should be enacted in form by the people; for in all ages of the Republic no law was ever made, but by the general suffrage of the people. The decrees of the Senate related chiefly to the executive part of the government; to the assignment of provinces to their magistrates; and of stipends to their generals, with the number of their soldiers; and to all occasional and incidental matters, that were not provided for by the laws, and required some present regulation: so that for the most part, they were but of a temporary nature, nor of force any longer, than the particular occasions subsisted, to which they had been applied.

But though they were not, strictly speaking, laws; yet they were understood

stood always to have a binding force; and were generally obeyed and submitted to by all orders, till they were annulled by some other decree, or overruled by some law. Yet this deference to them, as I have signified above, was owing rather to custom, and a general reverence of the city for the authority of that supreme council, than to any real obligation derived from the constitution of the government. For in the early ages, upon a dispute concerning a particular decree, we find the Consuls, who were charged with the execution of it, refusing to enforce it, because it was made by their predecessors, alledging, *that the decrees of the Senate continued only in force for one year*; or during the magistracy of those, by whom they were made [q]. And Cicero likewise, when it served the cause of a client,

[q] Καὶ ἄμεινον εἴναι νόμος εἰς αἱ κυρίες, ἡ Φιλία τὸ συνέδριον, ἀλλὰ πολιτεύματα καιρὸν εὐαντίου ἔχοντας ισχύν. Dionys. 9. 37.

whom

whom he was defending, to treat a decree of the Senate with slight, declared it to be of no effect, because it had never been offered to the people, to be enacted into a law [r]. In both which cases, though the Consuls and *Cicero* said nothing, but what was agreeable to the nature of the thing, yet they said it perhaps more strongly and peremptorily, than they would otherwise have done, for the sake of a private interest; the Consuls, to save themselves the trouble of executing a disagreeable act; and *Cicero*, to do a present service to a client, who was in great danger and distress. But on all occasions indeed, the principal magistrates, both at home and abroad, seem to have paid more or less respect to the decrees of the Senate, as it happened to serve their particular interest, or inclination, or the party, which they

[r] Cic. pr. Cluentio, 49.

espoused
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espoused in the state [s]. But in the last age of the Republic, when the usurped powers of some of it's chiefs had placed them above the controul of every custom or law, that obstructed their ambitious views, we find the decrees of the Senate treated by them, and by all their creatures, with the utmost contempt [t]; whilst they had a bribed and corrupted populace at their command, ready to grant them every thing, that they desired, till they had utterly oppressed the public liberty.

[s] Cicero recommending the affairs of *Cærellia* to *P. Servilius*, when he was governor of *Asia*, puts him in mind, that there was a decree of the Senate subsisting, which was favorable to her interest, and that he knew *Servilius* to be one of those, who paid great regard to the authority of the Senate. Ep. Fam. 13. 72.

[t] Habet orationem talem Consul, (Gabinius) qualem nunquam Catilina victor habuisset. errare homines, si etiam tum Senatum aliquid in Repub. posse, arbitrarentur. Cic. pr. Sext. 12.

S E C T. VII.

*Of the peculiar dignity, honors, and
ornaments of a Roman Senator.*

IT is natural to imagine, that the members of this supreme council, which held the reins of so mighty an empire, and regulated all it's transactions with foreign states, and which in it's flourishing condition, as Cicero says, *presided over the whole earth* [v], must have been considered every where as persons of the first eminence, which the world was then acquainted with. And we find accordingly, that many of them had even *Kings, cities, and whole nations*, under their particular patronage [x]. Cicero reciting the advantages of a Senator, above the other orders

[v] Qui quondam florens Orbi terrarum præfidebat. Phil. 2. 7.

[x] In ejus magistratus tutela Reges atque exterræ gentes semper fuerunt. [pr. Sext. 30.] Duæ maximæ

orders of the city, says, that he had authority and splendor at home; fame and interest, in countries abroad [y]: and on another occasion, “what city is there, says he, not onely in our provinces, but in the remotest parts of the earth, ever so powerfull and free, or ever so rude and barbarous; or what King is there, who is not glad to invite and entertain a Senator of the Roman people in his house [z]?”

It was from this order alone, that all ambassadors were chosen and sent to foreign states: and when they had

maximæ Clientelæ tuæ, [Catonis] Cyprus Insula, & Cappadociæ regnum, tecum de me loquentur: puto etiam Regem Deiotarum, qui tibi uni est maxime necessarius. [Cic. Ep. Fam. 15. 4.] Adsunt Segestani, Clientes tui. (P. Scipionis) [In Verr. 4. 36.] Marcelli, Siculorum Patroni. ib. 41.

[y] Auctoritas, domi splendor; apud exteris nationes, nomen & gratia. pr. Cluen. 56.

[z] Ecquæ civitas est, non in provinciis nostris, verum in ultimis nationibus, aut tam potens, aut tam libera, aut etiam tam immanis ac barbara: Rex denique ecquis est, qui Senatorem populi Romani tecto ac domo non invitet? Cic. in Verr. 4. xi.

occasion

occasion to travel abroad, even on their private affairs, they usually obtained from the Senate the privilege of a *free legation*, as it was called; which gave them a right to be treated every where with the honors of an ambassador, and to be furnished on the road with a certain proportion of provisions and necessaries for themselves and their attendants [a]: and as long as they resided in the Roman provinces, the governors used to assign them a number of *lictors* or mace-bearers, to march before them in state, as before the magistrates in *Rome* [b]. And if they had any law suit or cause of property depending in those provinces, they

[a] *Placitum est mihi, ut postularem legationem liberam mihi reliquisque nostris, ut aliqua causa proficisci honesta quereretur.* Cic. Ep. Fam. xi. i. it. vid. Att. 15. xi. C. Anicius—*negotiorum suorum causa, legatus est in Africam, legatione libera.* Cic. Ep. Fam. 12. 21. Suet. in Tiber. 31.

[b] *Idque a te peto, quod ipse in provincia facere sum solitus, non rogatus, ut omnibus Senatoribus Lictores darem. quod idem acceperam & cognoveram a summis viris factitatum.* Cic. Ep. Fam. 12. 21.

seem

seem to have had a right to require it to be remitted to *Rome* [c].

At home likewise they were distinguished by peculiar honors and privileges: for at the public shews and plays, they had particular seats set apart and appropriated to them in the most commodious part of the theater [d]: and on all solemn festivals, when

[c] Illud præterea—feceris mihi pergratum—
eos, quam cum Senatore res est, Romanam rejeceris.
ib. 13. 26.

[d] Lentulus, Popillius, quod erat libertini filius in Senatorum non legit. locum quidem Senatorium ludis, & cetera ornamenta reliquit. Cic. pr. Clu. 47. vid. it. Plutar. in Flaminin. p. 380. A.

But in the shews and games of the *Circus* they used to sit promiscuously with the other citizens, till the emperor *Claudius* assigned them peculiar seats there also. Suet. in Claud. 21.

The place where the Senators sat in the theaters was called the *Orchestra*, which was below all the steps or common benches of the theaters, and on a level with that part of the stage, on which the Pantomimes performed. vid. Suet. Aug. 35. & in J. Cæs. 39.

Æquales illic habitus, similesque videbis
Orchestrā & populum.— Juven. Sat. 3. 177.

In Orchestra autem Senatorum sunt sedibus loca destinata. Vitruv. I. 5. c. 6.

sacrifices

sacrifices were offered to Jupiter by the magistrates, they had the sole right of *feasting publicly in the capitol*, in habits of ceremony, or such, as were proper to the offices, which they had born in the city [e].

They were distinguished also from all the other citizens by the ornaments of their ordinary dress and habit, especially by their *vest* or *tunic*, and the fashion of their shoes; of which the old writers make frequent mention. The peculiar ornament of their *tunic* was the *latus clavus*, as it was called, being *a broad stripe of purple*, sewed upon the forepart of it, and running down the middle of the breast, which was the proper distinction between them and the Knights, who wore a

[e] Quosdam (Senatores) ad excusandi se verecundiam compulit: servavitque etiam excusantibus insigne vestis, & spectandi in Orchestra, epulandique publice jus. [Suet. Aug. 35.] Ea simultas quum diu mansisset. & solemni die Jovi libaretur, atque ob id sacrificium Senatus in Capitolio epularetur. A. Gell. 12. 8. Dio. 55. 554. C.

much narrower stripe of the same color, and in the same manner [f]. The fashion also of their shoes was peculiar, and different from that of the rest of the city. Cicero speaking of one *Asinius*, who, in the general confusion, occasioned by J. Cæsar's death, had intruded himself into the Senate, says, *that seeing the Senate house open after Cæsar's death, he changed his shoes, and became a Senator at once* [g]. This difference appeared in the

N color,

[f] Galli bracas deposuerunt, latum clavum sumpserunt. [Suet. J. Cæs. 80.] Anuli distinxere ordinem Equestrem a plebe—sicut tunica ab anulis Senatum—quamquam & hoc sero, vulgoque purpura latiore tunicæ usos etiam invenimus Praæcones. Plin. Hist. 33. 1.

Quid confert purpura major
Optandum?— Juv. Sat. 1. 106.

Namque ut quisque insanus nigris medium impe-
diit crus

Pellibus & latum demisit pectore clavum.

Hor. S. 1. 6. 28.

Paterculus de Mæcenate, vixit angusto clavo con-
tentus, l. 2. 88.

[g] Est etiam Asinius quidam Senator voluntarii, lectus ipse a se. apertam Curiam vidit post Cæ-
saris

color, shape, and ornament of the shoes. The color of them was *black*, while others wore them of any color perhaps, agreeably to their several fancies. The form of them was somewhat like to a short boot, reaching up to the middle of the leg, as they are sometimes seen in ancient statues and bass reliefs: and the proper ornament of them was, the figure of an *half moon* sewed or fastened upon the forepart of them near the ancles [b]. *Plutarch*, in his Roman quæstions, proposes several reasons of this emblematical figure [i]: yet other writers say, that it had no relation to the moon, as its shape seemed to indicate, but was designed to express the letter C, as the

Iaris necem. mutavit calceos: pater conscriptus repente est factus. Cic. Phil. 13. 13.

[b] *Adpositam nigrae lunam subtexit alutæ.*

Juv. 7. 192.

*nigris medium impediit orus
Pellibus—*

Hor. supr.

[i] *Quæst. Roman. 75.*

numeral

numeral mark of *an hundred*, to denote the original number of the Senate, when it was first instituted by *Romulus* [k].

As to the gown, or upper robe of the Senators; I have not observed it to be described any where, as differing from that of the other citizens; except of such of them onely, as were actual magistrates of the city, as the *Consuls*, *Prætors*, *Ædiles*, *Tribuns*, &c. who, during the year of their magistracy, always wore the *Prætexta*, or a gown bordered round with a stripe of purple [/]: in which habit also, as I have signified above, all the rest

[k] Zonar. II. Ifidor. 19. 34.

[/] Cum vos vestem mutandam censuissetis, cunctique mutassent, ille (*Consul Gabinius*) unguentis oblitus, cum *toga prætexta*, quam omnes *Prætores*, *Ædilesque* abjecerant, irrigit squalorem meum. Cic. post. red. in Sen. 5.

Quod *Tribuni plebis* *prætextam* quoque gestare solerent, a Cicerone indicatum est, qui *Quintii Tribuni pl. purpuram usque ad talos demissam irridet*. [pr. Cluen. 40.] quam quidem purpuram *Quintilianus*, de eodem *Quintio* loquens, *Prætextam* appellat. l. 5. 13. p. 275. Ed. Oxon.

*A Treatise on
of the Senate, who had already born
those offices, used to assist at the pub-
lic festivals and solemnities [m].*

[m] Nescis heri quartum in Circo diem Ludorum Romanorum fuisse? te autem ipsum ad populum tulisse, ut quintus præterea dies Cæsari tribueretur? cur non sumus prætextati? Cic. Phil. 2, 43.

Prætorio licet prætexta toga uti, Festis aut Solennibus diebus. Senec. Controv. I. 1. 8.



APPENDIX.

APPENDIX.

TO this description of the Roman Senate, I have subjoined here, by way of Appendix, an extract or two, from *Cicero's* letters and orations, which give a distinct account of some particular debates, and the intire transactions of several different days; and will illustrate and exemplify, what has been said above, concerning the method of their proceedings.

M. CICERO to his brother QUINTUS.

Lib. ii. 1.

“ **T**HE Senate was fuller, than
 “ I thought it possible to have
 “ been, in the month of *December*,
 “ when the holydays were coming on
 “ [n]. There were present, of us
 “ Consulars, besides the two Consuls
 “ elect, *P. Servilius, M. Lucullus,*
 “ *Lepidus, Volcatius, Glabrio.* All
 “ the Praetors. We were really full:
 “ two hundred at least in all. *Lupus*
 “ had raised an expectation. He spoke
 “ indeed exceedingly well on the af-
 “ fair of the *Campanian lands* [o]:
 “ was

[n] These holydays were the *Saturnalia*, sacred to Saturn, which lasted, as some say, five, or as others, seven days. But the two last were an addition to the ancient festival, and called *Sigillaria*.

Et jam Saturni quinque fuere dies. Mart. 4. 89.
 Saturni septem venerat ante dies. Id. 14. 7.

[o] *P. Rutilius Lupus* was one of the new Tribuns of the people, just entered into his office on the

“ was heard with great silence. You
“ know the nature of the subject. He
“ ran over all my acts, without omit-
“ ting one. There were some stings
“ on *C. Cæsar*, abuses on *Gellius*, ex-
“ postulations with *Pompey*, in his
“ absence. He did not conclude till
“ it was late: and then declared, that
“ he would not ask our opinions, lest
“ he might expose us to the incon-
“ venience of any man’s resentment
“ [p]: that from the reproaches, with
“ which that affair had been treated
“ before, and from the silence, with

the 10th of *December*, A. U. 696, by whose auth-
ority this meeting of the Senate appears to have been
summoned, in order to reconsider the affair of the
Campanian lands, and to repeal the law, which *J. Cæsar*
had procured from the people about three
years before, for a division of those lands to the
poorer citizens; to the great disgust of the Senate,
and all the honest part of the city. See Life of *Cic.*
Vol. I. p. 294, 428.

[p] The repeal of this law would have been
greatly resented by *J. Cæsar*, who was now com-
manding in *Gaul*: and more immediately by *Pom-
pey*, who was now united with him in the league of
the *Triumvirate*, and engaged to support all his in-
terests in *Rome*.

“ which he was now heard, he understood, what was the sense of the Senate: and so was going to dismiss us. Upon which *Marcellinus* said, You must not judge from our silence, *Lupus*, what it is, that we approve or disapprove on this occasion: for as to myself, (and the rest, I believe, are of the same mind) I am silent upon it for this reason, because I do not think it proper, that the case of the *Campanian lands* should be debated in *Pompey's* absence [q]. Then *Lupus* said, that he detained the Senate no longer. But *Racilius* rose up, and began to move the business of the trials [r]: and

[q] *Pompey* was now in *Sardinia*, providing stores of corn for the use of the city, where there was a great scarcity: which commission had been decreed to him by the Senate at *Cicero's* motion. See *Life of Cic.* Vol. I. p. 407.

[r] *T. Annius Milo*, one of the late *Tribuns*, whose office was just expired, had impeached *Clodius* in form, for the violences committed by him in the city, but *Clodius*, by faction and the help of the

“ and asked *Marcellinus* the first [s].
“ Who, after heavy complaints on
“ the burnings, murthers, stonings
“ committed by *Clodius*, delivered his
“ opinion ; that he himself, with the
“ assistance of the *Prætor* of the ci-
“ ty, should make an allotment of
“ judges, and when that allotment
“ was made, that then the assemblies
“ of the people should be held for the
“ elections. That if any one should
“ obstruct the trials, he should be
“ deemed to act against the interest
“ of the Republic. This opinion was
“ greatly applauded : *C. Cato* spoke

the Consul *Metellus*, found means to retard and evade any trial ; and to skreen himself from that danger, was suing for the *Ædileship* of the next year. *Milo* therefore, on his side, contrived by his *Tribunitian* power, to obstruct any election, till *Clodius* should be brought to a trial. This was the present state of the affair, and the point in debate was, whether the trials or the elections should be held the first.

[s] *Cn. Cornelius Lentulus Marcellinus* was now Consul elect, and *L. Marcius Philippus*, mentioned below, was his Colleague, who were to enter into office on the first of *January*.

“ against

" against it: and *Cassius* also, but with
 " a great clamor of the Senate, when
 " he declared himself for the assem-
 " blies, preferably to the trials. *Phi-*
 " *lippus* assented to *Lentulus*'s opi-
 " nion. *Racilius* afterwards asked me
 " the first of the private Senators. I
 " spoke long, on all the madness and
 " violences of *P. Clodius*, and accused
 " him, as if he had been a criminal
 " at the bar, with many and favora-
 " ble murmurings of the whole Se-
 " nate. *Vetus Antistius* said much
 " in praise of my speech, nor indeed
 " without some eloquence [t]. He
 " espoused the cause of the trials, and
 " declared, that he would have them
 " brought on the first. The house
 " was going into that opinion: when
 " *Clodius* being asked [v], began to

[t] *Racilius*, *C. Cato*, *Cassius*, *Antistius*, the chief speakers in this debate, were all Tribuns of the people, and Collegues of *Lupus*.

[v] He was asked probably by one of the Tribuns, *Cato* or *Cassius*, who were on the same side of the quæstion with him.

" wast

" wast the day in speaking. He rav-
" ed, at his being so abusively and
" roughly treated by *Racilius*, when
" on a sudden, his mercenaries with-
" out doors raised an extraordinary
" clamor, from the Greek station and
" the steps, incited, I suppose, against
" *Q. Sextilius* and the friends of *Mi-*
" *lo*. Upon this alarm, we broke up
" instantly in great disgust. You have
" the acts of one day: the rest, I
" guess, will be put off to the month
" of *January*.

M. TULLIUS

M. TULLIUS CICERO, to P. LENTULUS,
Proconsul.

Ep. Fam. i. 2.

“ **N**OTHING was done in the
“ Senate, on the *Ides of Ja-*
“ *nuary*: because a great part of the
“ day was spent in an altercation, be-
“ tween *Lentulus*, the Consul, and
“ *Caninius*, Tribun of the people. I
“ spoke much also myself on that day,
“ and seemed to make a great im-
“ pression on the Senate, by remind-
“ ing them of your affection to their
“ order. The day following there-
“ fore it was resolved, that we should
“ deliver our opinions in short [x].
“ For

[x] This letter was written about a month after the former; soon after *Cn. Lentulus Marcellinus* and *L. Marcius Philippus* had entered upon the Consulship. The quæstion under debate was, in what manner they should restore King *Ptolemy* to the throne of *Ægypt*, from which he had been driven by his subjects. *P. Lentulus Spinther*, to whom this letter is

“ For the inclination of the Senate
“ appeared to be turned again in our
“ favor : which I clearly saw, as well
“ by the effect of my speaking, as by
“ applying to them singly, and asking
“ their opinions. Wherefore when
“ *Bibulus*’s opinion was declared the
“ first ; that three ambassadors should
“ carry back the King : *Hortensius*’s
“ the second ; that you should carry
“ him without an army : *Volcatius*’s
“ the third ; that *Pompey* should car-
“ ry him back : it was demanded, that
“ *Bibulus*’s opinion should be divided.
“ As to what he said, concerning the
“ scruple of religion [y], to which no

“ oppo-

is addressed, who had been Consul the year before, and was now Proconsul of *Cilicia*, was very desirous to be charged with the commission of restoring the King : *Cicero* was warmly in his interest, and *Pompey* pretended to be so too : yet all *Pompey*’s friends were openly soliciting the commission for *Pompey*.

[y] When this affair was first moved in the Senate, they seemed to be generally inclined to grant the commission to *Lentulus* ; and actually passed a decree in his favor : yet many of them afterwards, either out of envy to *Lentulus*, or a desire of paying their

“ opposition could then be made, it
“ was agreed to by all: but as to the
“ three ambassadors, there was a great
“ majority against it. *Hortensius's o-*
“ *pinion was next: when L^upus, Tri-*
“ *bun of the people, because he had*
“ *made the motion in favor of Pom-*
“ *pey, began to insist, that it was his*
“ *right to divide the house upon it,*
“ *before*

their court to *Pompey*, or a dislike to the design it self, of restoring the King at all, contrived several pretexts to obstruct the effect of it: and above all, by producing certain verses from the *Sibylline* books, forewarning the Roman people, *never to restore any King of Ægypt with an army*. *Bibulus's opinion re-*
lated to these verses, and upon their authority, de-
clared it dangerous to the Republic, to send the
King home with an army: and though this pretext
was so silly in itself, and known to be so by all
those, who made use of it, yet the superstition of
the populace, and their reverence for the Sibyl's au-
thority was so great, that no opposition could be
made to it. The Senate embraced it therefore, as
Cicero says, not from any scruple of religion, but
*malevolence to *L^unulus*, and the envy and disgust,*
which the scandalous bribery, practised by the King,
had raised against him. See Ep. I.

“ before the Consuls [z]. There was
“ a great and general outcry against
“ his speech ; for it was both unre-
“ sonable and unprecedented. The
“ Consuls neither allowed, nor great-
“ ly opposed it : they had a mind,
“ that the day should be wasted :
“ which was done accordingly. For
“ they saw a great majority, ready
“ to go into *Hortensius's* opinion, yet
“ seemed outwardly to favor *Volca-*
“ *tius's*. Many were asked, and a-
“ gainst the will of the Consuls. For
“ they were desirous, that *Bibulus's*
“ opinion should take place. This

[z] The opinion delivered in this debate in favor of Pompey, was first proposed by *Volcatius*, a Con- fular Senator ; yet was espoused afterwards by *Lu- pus*, Tribun of the people, and referred, or moved by him in form to the Senate, in order to be put to a vote, which was the peculiar right of the magistrates. But as to his dispute with the Consul about a priority in dividing the house, it seems to have been started by him with no other view, but to waste the day, as the Consuls also desired to do, in a fruit- less altercation, so as to prevent *Hortensius's* opinion, which seemed likely to prevail, from being brought into debate.

“ dispute being kept up till night, the
“ Senate was dismissed, &c.

In one of *Cælius's* letters to *Cicero*, we find the following decrees of the Senate transcribed in proper form, and sent with the other news of the city to *Cicero*, when Proconsul of *Cilicia*.

“ The authority of the decree of
“ the Senate. On the 30th of Sep-
“ tember, in the temple of *Apollo*,
“ there were present at the engross-
“ ing of it, *L. Domitius*, the son of
“ *Cn. Abenobarbus*; *Q. Cæcilius*, the
“ son of *Q. Metellus Pius Scipio*; *L.*
“ *Villius*, the son of *Lucius Anna-*
“ *lis*, of the *Pomptine* tribe: *C. Sep-*
“ *tinius*, the son of *Titus*; of the
“ *Quirine* tribe: *C. Lucceius*, the son
“ of *C. Hirrus*; of the *Pupinian*
“ tribe: *C. Scribonius*, the son of *C.*
“ *Curio*; of the *Popillian* tribe: *L.*
“ *Atteius*, the son of *L. Capito*; of
“ the *Aniensian* tribe: *M. Oppius*,
“ the son of *Marcus*, of the *Terentine*
“ tribe.

“ tribe. Whereas *M. Marcellus*, the
“ Consul, proposed the affair of the
“ Consular provinces, his opinion up-
“ on it was this; that *L. Paullus* and
“ *C. Marcellus*, Consuls elect, should
“ after their entrance into their ma-
“ gistracy, refer the case of the Con-
“ sular provinces to the Senate, on the
“ first of *March*, which was to be in
“ their magistracy: and that no other
“ business should be moved by the
“ Consuls on that day before it, nor
“ any jointly with it: and that for
“ the sake of this affair, they might
“ hold the Senate, and make a decree
“ on the *Comitial* days: and when-
“ ever it should be brought before the
“ Senate, they might call away from
“ the bench any of the three hundred,
“ who were then judges: and if it
“ was necessary, that any thing should
“ be enacted about it by the people
“ or the Commons, that *Serv. Sulpicius* and *M. Marcellus*, the Consuls

O th,

“ the Praetors, the Tribuns, or any of
“ them, who thought fit, should lay
“ it before the people or the Com-
“ mons: and whatever they omitted
“ to refer to the people or the Com-
“ mons, that the succeding magistrates
“ should refer it.

In Cicero's first *Philippic* also, in which he is reciting all their late transactions in the Senate, from the time of Cæsar's death, there is this passage.
“ On that day, in which we were sum-
“ moned to the temple of *Tellus*, I
“ there laid a foundation of peace, as
“ far as it was in my power, and re-
“ newed the old example of the *Athe-
“ nians*, and made use of the same
“ Greek word, which that city then
“ used, in calming their civil differ-
“ tions [a]: and gave my opinion,
“ that all remembrance of our late dif-

[a] The Greek word, *amnysia*, amnesty.

“ cords

" cords should be buried in eternal
" oblivion. *Antony's* speech on that
" occasion was excellent ***. He
" abolished for ever out of the Re-
" public, the office of a Dictator, which
" had usurped all the force of regal
" power. Upon which we did not so
" much as deliver our opinions. He
" brought with him in writing the
" decree, which he was desirous to
" have us make upon it: which was
" no sooner read, than we followed
" his authority with the utmost zeal;
" and gave him thanks for it by a-
" nother decree in the amplest terms
" [b].

But on another occasion, in his *third*
Philippic, he reproaches *Antony* for de-
creeing a supplication or public thank-
giving to *M. Lepidus*, by a division
only, or vote of the Senate, without
asking any one's opinion upon it: which,
in that case of a supplication, had ne-

ver

[b] Phil. i. i.

ver been done before [c]. For it was thought a mark of greater respect to the General, in whose honor it was granted, to give his friends an opportunity of displaying his particular praises and services, in their speeches on such occasions.

[c] Fugere festinans, Senatus consultum de supplicatione per discessiōnem fecit: cum id factum esset antea nunquam. Phil. 3. 9.

That the opinions of the particular Senators used to be asked, in the case of decreeing supplications, appears from Cic. Ep. Fam. 8. xi.



MVSEVM
BRITAN
VICVM
FINTS.

